

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RUDY BAHENA**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-09545-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Rudy Bahena, the claimant/appellant filed an appeal from the March 30, 2021, (reference 02) unemployment insurance decision that denied benefits based he was not available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2021. Mr. Bahena participated and testified. The employer participated through Lacy Rumsey, district human resources manager and Barbara Buss, hearing representative.

**ISSUE:**

Is Mr. Bahena able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bahena began working for the employer on August 7, 2019. He worked as a part-time cashier at the employer's Des Moines store. He quit on March 11, 2021 to move out of state.

Mr. Bahena has a high school diploma. He previously worked at Target as an online fulfillment association, at a nursing home for about four years as a dishwasher, lead cook and maintenance person and at a gas station as a cashier. Since moving to Missouri, Mr. Bahena has looked for retail jobs at grocery stores, gas stations and other retail employers.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Bahena is able to and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721

(Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Mr. Bahena is able to and available for work. Mr. Bahena moved out of state and he is actively seeking work. Since Mr. Bahena is able to and available for work, benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The March 30, 2021 (reference 02) unemployment insurance decision is reversed. Mr. Bahena is able to and available for work. Benefits are allowed, provided he is otherwise eligible.



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Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

July 1, 2021  
Decision Dated and Mailed

dz/mh