

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MATTHEW O'BRIEN**  
Claimant

**MIDWEST MEDICAL TRANSPORT CO**  
Employer

**APPEAL 17A-UI-10469-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/13/17**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 11, 2017 (reference 09) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on October 31, 2017. The claimant, Matthew O'Brien, participated. The employer, Midwest Medical Transport Company, sent in written notice on October 19, 2017, that it would not be participating in the appeal hearing. Claimant's Exhibit A was received and admitted into the record without objection.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending August 19, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant separated from employment with this employer sometime in August 2017. At the time that claimant was discharged, he had not yet been released to return to working full-time. Claimant received a release from his doctor on September 28, 2017. (Exhibit A) This release permits him to work full time without any restrictions. Claimant has been actively and earnestly seeking work since his separation from the employer. He made at least two job contacts each week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective September 24, 2017. Benefits are withheld until that point, and they are allowed from that week forward, provided claimant is otherwise eligible.

Iowa Code § 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(2) 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.

(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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Prior to the week of September 24, 2017, claimant had not been released to full-time work. Therefore, he was not physically able to work before that time, and benefits are withheld. Once claimant was released to return to full-time work, he can be considered able to work. Benefits are allowed from that point forward, provided he is otherwise eligible.

**DECISION:**

The October 11, 2017 (reference 09) unemployment insurance decision is modified in favor of appellant/claimant. Claimant is able to work and available for work effective September 24, 2017. Benefits are allowed from that point forward, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn