

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DAVID W BOSWELL
Claimant

APPEAL NO: 18A-UI-07721-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALLEY TRANSPORTATION SERVICES IN
Employer

OC: 06/17/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 10, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2018. The claimant participated personally. The employer participated through Brad Grafe, owner/president. Kelley Krayecki, human resources specialist, also participated. Claimant Exhibits A, B, C, and D were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

Note to claimant: Additional information about food, housing, and other resources, can be found by dialing 211 or at www.211iowa.org.

ISSUE:

Is the claimant able to work and available for work effective June 17, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed full-time as an over-the-road truck driver and last performed work on June 5, 2018, when he had a stroke. The claimant is currently on a medical leave through FMLA (Claimant Exhibit C). His leave of absence will expire on August 29, 2018.

The claimant's current medical condition prevents him from performing work as an over-the-road truck driver (Claimant Exhibit C). The claimant cannot perform other jobs based upon his current medical condition. He is currently under medical care, participating in physical therapy and may also attend occupational therapy in the future. He is not able to drive and his doctor advised him it would be months before he could return back to any work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). The rules also provide that an individual is disqualified for being unavailable to work if an individual has a medical report stating the individual is unable to work. 871 IAC 24.23(6).

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.

Iowa Admin. Code r. 871-24.22(2)j(1), (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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law because the claimant is currently on an approved leave of absence for a personal medical condition. Accordingly, benefits are denied.

DECISION:

The July 10, 2018, (reference 01) decision is affirmed. The claimant is not able to work and available for work effective June 17, 2018. Benefits are denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn