

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE AVALOS MARTINEZ
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 18A-UI-08573-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/15/18
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 10, 2018, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 12, 2018 in-person. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked for employer as a pig gland remover. Claimant worked full-time on the floor and stood throughout his workday. Claimant was diagnosed with diabetes approximately four years ago. As a result of claimant's diabetes, claimant cannot continue to do his job all day without accommodations from employer. The diabetes has affected claimant's feet, and, with the added contribution of claimant's needing to wear rubber boots on the warehouse floor, have created cracking of the skin and swelling of the ankles.

Claimant forwarded to the administrative law judge a medical report from January 5, 2018. Said report indicates that claimant had a foot injury from years earlier that continues to cause him problems. It also noted that claimant stands all day at work.

Claimant indicated that his work history has him standing on his feet all the time. Claimant had not shown experience with office work or work that allows for sitting. Claimant stated that the only job possible that allowed sitting for periods was that of handing out materials to people working on the floor. Claimant stated that there were no openings at that job.

REASONING AND CONCLUSIONS OF LAW:

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(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. 871-24.23(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 physician and has not been released as being able to work.

Inasmuch as the medical problem (diabetes) was not work-related and the treating physician has not released the claimant to return to work without restrictions, the claimant has not established the ability to work. The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated August 10, 2018, reference 02 is affirmed. Claimant is not eligible to receive unemployment insurance benefits as he has not shown the ability to work in any position for which he has the skills and experience to do.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn