

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L BUNCH
Claimant

APPEAL NO. 19A-UI-05776-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/02/19
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Michael Bunch filed a timely appeal from the June 26, 2019, reference 02, decision that denied benefits effective June 2, 2019, based on the deputy's conclusion that Mr. Bunch was unable to work due to illness. After due notice was issued, a hearing was held on August 8, 2019. Mr. Bunch participated. Mehdina Kurtovic represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-05126-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of Mr. Bunch's weekly claims (KCCO) and of the June 27, 2019, reference 03, decision that allowed benefits to Mr. Bunch effective June 23, 2019, provided he was otherwise eligible, based on the deputy's conclusion that Mr. Bunch was at that point able to work and available for work.

ISSUE:

Whether the claimant was able to work and available for work during the three-week period of June 2 through June 22, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Bunch established an original claim for benefits that was effective June 2, 2019 and made weekly claims that included weekly claims for the weeks that ended June 8, 15 and 22, 2019.

During the week that ended June 8, 2019, Mr. Bunch was employed on a full-time basis with Tyson Fresh Meats, Inc. Mr. Bunch was absent from work for the majority of that week due to illness. Mr. Bunch was dealing with swelling in his feet that made it impossible for him to drive to work and that made it uncomfortable for him to perform his hog production line worker duties. Mr. Bunch was also dealing with high blood pressure issues that caused him to become dizzy and unstable when standing for extended periods. Despite the pain and swelling he was experiencing in his feet, Mr. Bunch reported for work on Thursday, June 6, 2019, and was discharged from the employment at that time. Mr. Bunch did not seek other employment that week.

During the week that ended June 15, 2019, Mr. Bunch applied for two jobs. During the week that ended June 22, 2019, Mr. Bunch applied for three jobs. On June 20, 2019, Mr. Bunch participated in a fact-finding interview regarding his separation from Tyson, his ability to work and his availability for work. After the fact-finding interview, Mr. Bunch contacted his doctor's office and set up a medical evaluation for June 24, 2019. At the time of the medical examination, Mr. Bunch's doctor provided Mr. Bunch with a memo that stated Mr. Bunch was able to work without restrictions. Mr. Bunch also obtained a copy of the physician's notes that included his blood pressure measurement of 136/88 a reference to ongoing pain in Mr. Bunch's left foot. Mr. Bunch provided the medical note to Iowa Workforce Development. On June 27, 2019, a Benefits Bureau deputy entered a reference 03 decision that allowed benefits to Mr. Bunch effective June 23, 2019, provided he was otherwise eligible, based on the deputy's conclusion that Mr. Bunch was at that point able to work and available for work.

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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

During the week that ended June 8, 2019, Mr. Bunch was attached to full-time employment, was absent from that employment for the majority of the week due to illness, and elected not to seek other employment due to illness. Mr. Bunch did not meet the able and available requirements during that week and is not eligible for benefits for that week.

Though Mr. Bunch met the job search requirement for the weeks that ended June 15 and 22, 2019, he presented insufficient evidence to prove that he was physically able to perform full-time work and available for full-time work during those two weeks. Those weeks followed a nearly full-week absence due to illness related to his foot issues, his report to work on June 6 despite ongoing pain in his foot, and his decision not to seek work during the week ending June 8, 2019 due to illness. Mr. Bunch is not eligible for benefits for the weeks that ended June 15 and 22, 2019. In light of the June 27, 2019, reference 03, decision that allowed benefits to Mr. Bunch effective June 23, 2019, provided he was otherwise eligible, based on the deputy's conclusion that Mr. Bunch was at that point able to work and available for work, the administrative law judge need not consider Mr. Bunch's ability to work or availability for work for the period beginning June 23, 2019.

DECISION:

The June 26, 2019, reference 02, decision is modified as follows. The claimant did not meet the able and available requirements for the three-week period of June 2 through June 22, 2019 and is not eligible for benefits for those three weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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