

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**WILLIAM S MASON**  
Claimant

**APPEAL 14A-UI-12667-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/16/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 3, 2014 (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on January 7, 2015. Claimant participated and was represented by Mark Hedberg, Attorney at Law.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is no longer working with his former employer, Warren County, as a road grader. He has permanent medical restrictions of lifting or carrying no more than 20 pounds above his chest. He has a high school diploma and can sweep, pick up and deliver parts, drive truck, deliver feed and furniture. He is looking for work driving, making deliveries, and light janitorial.

**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 November 16, 2014.

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.

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

Since the employment ended claimant is no longer obligated to return to employer and offer his services. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Since he has performed jobs consistent with his permanent medical restrictions within the work history, he is considered able to work even if he cannot return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of November 16, 2014. Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The December 3, 2014 (reference 03) unemployment insurance decision is reversed. The claimant is able to work and available for work effective November 16, 2014. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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