

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDALL H RUSCHMANN
Claimant

APPEAL NO. 17A-UI-03580-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE HOLDINGS GROUP
Employer

OC: 02/26/17
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kendall Ruschmann filed a timely appeal from the March 28, 2017, reference 03, decision that denied benefits effective February 26, 2016, based on the claims deputy's conclusion that Mr. Ruschmann was unduly limiting his availability for work. After due notice was issued, a hearing was held on April 27, 2017. Mr. Ruschmann participated. The employer did not register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-03836-JTT. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant (DBRO) as well as the claimant's weekly claims (KCCO). The administrative law judge took official notice of the March 16, 2017, reference 01, decision that held Mr. Ruschmann was discharged from Prairie Holdings Group on February 28, 2017 for no disqualifying reason.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 28, 2017, Kendall Ruschmann was discharged from full-time employment with Prairie Holdings Group for no disqualifying reason. See the March 16, 2017, reference 01, decision. In response to the discharge, Mr. Ruschmann established a claim for unemployment insurance benefits that was deemed effective February 26, 2017. Since that time, Mr. Ruschmann has sought new full-time employment and has made two employer contacts per week. Mr. Ruschmann has an Associate of Applied Science degree in computer networking and has worked in the Information Technology (IT) field for several years. Mr. Ruschmann has not limited his work search to the IT field. In December 2016, Mr. Ruschmann underwent surgery on his left knee. As of February 22, 2017, the medical provider had released Mr. Ruschmann to return to work without restrictions. It was after the medical release that Mr. Ruschmann commenced his brief, full-time employment with Prairie Holdings Group.

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. 871-24.22(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.

The evidence in the record establishes that Mr. Ruschmann has been released by his doctor to work full-time without restrictions. Since Mr. Ruschmann filed his claim for unemployment insurance benefits, he has engaged in an active and earnest search for new full-time employment and has not unduly restricted his availability for work. Effective February 26, 2017, Mr. Ruschmann is eligible for unemployment insurance benefits, provided he meets all other eligibility requirements.

DECISION:

The March 28, 2017, reference 03, is reversed. Since he established his claim for benefits, the claimant has been able to perform full-time work, has been available for full-time employment, and has been engaged in an active and earnest search for new full-time employment. Effective February 26, 2017, the claimant is eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn