

UNEMPLOYMENT INSURANCE APPEALS

SENAD BABIC
Claimant

APPEAL NO. 16A-UI-10603-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/04/16
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 September 22, 2016 reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 12, 2016. Claimant participated personally.

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 has secured numerous body injuries. His last, most recent injury was to his lower back while he was at work. Subsequent to claimant's most recent work injury, he had been placed on light duty work.

Claimant stated that employer's doctor had released claimant to regular duty work, but claimant stated that he was not able to do the regular duty work. After claimant was reduced to regular duty work, employer eliminated claimant's light duty position, and only allowed him to do regular duty tasks. Claimant stated that he couldn't do those tasks. Claimant has also not produced any other doctor's note which would state that claimant is only able to do light duty 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(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.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, the claimant is able to work. Whereas claimant does not agree with this decision, claimant believes he is not able to work, other than in light duty work. Claimant has only applied for jobs which are light duty. This unduly limits claimant's ability to gain employment. Benefits are withheld until such time as the claimant either gets a doctor's note that restricts his work to light duty work or claimant expands his work search to all fields of employment absent such a doctor's restriction.

DECISION:

The decision of the representative dated September 22, 2016, reference 03 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective September 4, 2016.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs