

REASONING AND CONCLUSIONS OF LAW:

Legal Standards For Able & Available Issue: Iowa Code section 96.4(3) (2017) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

871 IAC 24.22 expounds on this:

871—24.22 Benefit 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.

24.22(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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

The reasons that can render an individual no longer available to work include:

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(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.

871 IAC 24.23(34)-(35).

“An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides.” *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). This means that when evaluating whether a person with a protected

disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.* Generally the worker must be “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.” 871 IAC 24.22(2).

The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. 871 IAC 24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979).

Able & Available Discussion: First of all the question of work relatedness has no relevance to the question of availability. The limitation of the ability to work is the same for work related or non-work related conditions.

Turning to the limitations themselves we find that they are so restricting that the Claimant would not be able to perform work for which the Claimant, given his proven experience, abilities, and training, is reasonably available for. Again, “the labor market must be described in terms of the individual,” and we find that this Claimant is not genuinely attached to the labor market so long as he is restricted from lifting no more than 5 pounds. 871 IAC 24.22(2). The Claimant has failed to prove that he has available to *him* reasonably suitable full-time employment so long as those restrictions persist. It is laudable that he was willing to give other non-specified jobs a try, but this is not proof that he could actually perform these other jobs. We find that the Claimant is not able and available for work at this time.

We recognize that under rule 871 IAC 24.22(2)(j) a claimant is not eligible during “[a] leave of absence negotiated with the consent of both parties...” We do not, however, base our decision on this rule. The parties dispute whether the Claimant was on a leave of absence following October 24 or was terminated on that date. We do not resolve the dispute over the separation but remand on the issue. Our ruling on able and available is based on conclusion that the Claimant’s restrictions render him not genuinely attached to the labor market. Given this the Claimant should note well that if his restrictions are changed, and he feels that he as a result has become reattached to the labor market, then he should present the altered restrictions to his local Workforce office and request that he be determined able and available. Of course, the Claimant should file weekly claims during any period he thinks he is able and available even if no agency determination had yet been made.

Remand On Separation: The notice of hearing in this matter contained as an issue whether the Claimant should be disqualified based on the nature of the separation from Employment. That remains an issue in the case, and the Administrative Law Judge did not resolve the question of such a disqualification in his decision. We therefore remand the matter to the Administrative Law Judge to conduct a hearing, and to issue a decision, on the issue of whether the Claimant should be disqualified based on the nature of the separation, if any, from employment. We accordingly deny the Employer’s proffer of new and additional evidence on the ground that it is not relevant to the able and available issue, and that is the only issue we address in today’s decision.

Note to the Parties: Solely for the edification of the parties, we point out that “[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is

binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.”

Iowa Code §96.6(4). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The administrative law judge’s decision dated January 10, 2017 is **REVERSED and REMANDED**. The Employment Appeal Board concludes that the Claimant was not able and available for work during the period of his lifting restrictions. Accordingly, he is denied benefits from November 11, 2016 through January 9, 2017 and continuing thereafter until such time as he proves that his medical condition has changed sufficiently that he is able and available for work.

The Board also remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on our able and available determination.

On the issue of whether the Claimant is disqualified based on the nature of the separation, we remand to the Administrative Law Judge. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a new decision in consideration of the evidence, which provides the parties appeal rights. This decision of the administrative law judge shall be based upon that evidence, including testimony and exhibits, which is admitted in the new hearing, and may not be based on evidence adduced during the first hearing although any party may request that evidence from the first hearing be made part of the record during the second hearing.

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RRA/fnv