

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JODY H MOONEY**  
Claimant

**REBOUND 800 LOCUST LLC**  
Employer

**APPEAL 19A-UI-00193-DG**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/11/18**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 4, 2019, (reference 03) that held claimant not able to and available for work. After due notice, an in-person hearing was scheduled for and held on January 30, 2019 in Des Moines, Iowa. Claimant participated personally and was represented by Rob Poggenklass, Attorney at Law. Employer participated by Carl Deekan, Director of Operations. Employer's Exhibits 1-9 and Claimant's Exhibit A were admitted into evidence.

**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 was separated from his employment on December 14, 2018. After claimant's employment was terminated, claimant requested a letter from his doctor explaining his illness, and the reason he had missed work while employed. The letter states that the doctor believed claimant was planning on seeking part-time employment, but did not restrict claimant to part-time work only.

After being separated from the employment on December 14, 2018 the claimant has been earnestly and actively seeking work. Claimant has recorded his weekly job contacts, and he has been seeking full-time employment since December 16, 2018. Claimant has experience working as a front desk representative, and he is able to work full-time in those types of occupations without restrictions.

**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 December 16, 2018.

Iowa Code section 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.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "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* at 723. 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.*

Inasmuch as the claimant's treating physician has not placed the claimant under any work restrictions, and he has been seeking full-time employment that is consistent with employment found in his work history, the claimant has established the ability to work. Benefits shall be allowed effective December 16, 2018.

**DECISION:**

The decision of the representative dated January 4, 2019, (reference 03) is reversed. Claimant is eligible to receive unemployment insurance benefits, effective December 16, 2018, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn