

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICKEL R EZZELL
Claimant

APPEAL 16A-UI-01463-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/03/16
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 27, 2016, (reference 03) unemployment insurance decision that denied benefits. The claimant was properly notified about the hearing. A telephone hearing was held on February 29, 2016. The claimant participated personally. The administrative law judge took official notice of the administrative record, including fact-finding documents.

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 was last employed at Martini's Grill and was separated from employment on October 30, 2015. The claimant is currently searching for jobs in the welding and manufacturing field. He does not possess a driver's license but has a family member available for transportation. He is not in school, and is available for work, full-time or part-time, at any shift, in the Burlington geographical area.

The claimant is currently receiving treatment for several mental illnesses, and is currently on medication. He also routinely meets with his doctor, therapist, psychiatrist and counselor. At this time, no doctor or treating physician has imposed any restrictions on the claimant's ability to perform work based on his mental health conditions.

The claimant had his appendix removed on February 27, 2016, and is on a one-week work restriction through March 4, 2016. He is expected to be released without restriction and could begin work effective March 7, 2016.

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, except for the week of February 28 through March 4, 2016.

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(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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant has no medical restriction or other limitation on employability effective January 3, 2016 through February 27, 2015. The claimant is currently under medical restriction effective February 28, 2016 and is unable for work due to recovery from appendix removal. Accordingly, benefits are allowed as the claimant is able to work and available for work effective January 3, 2016 except for the one-week period of February 28, 2016 until March 4, 2016.

DECISION:

The January 27, 2016, (reference 03) decision is modified in favor of the claimant. The claimant is able to work and available for work effective January 3, 2016 except for the one-week period of February 28, 2016 until March 4, 2016. Benefits are allowed during the designated period, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs