

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MITCHELL T SMITH
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 18A-UI-10714-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/07/18
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 24, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a determination that he was not able to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on November 13, 2018. Claimant participated and testified. Employer participated through Benefits Specialist Mary Eggenburg. Claimant's Exhibit A was received into evidence.

ISSUE:

Is the claimant able to work and available for work effective October 7, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 17, 2005. Claimant last worked as a full-time kitchen helper. In June 2018 claimant was having seizures from a non-work related medical condition and could not work. Claimant was subsequently separated from employment. After he was separated from employment, claimant was released to return to work, without restriction, effective October 29, 2018. (Exhibit A). Claimant has no other limitations on his ability to or availability for work and has been making his required weekly job searches.

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 October 28, 2018, but was not able to work prior to that date.

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. Employment Appeal Board*, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as claimant was unable to work due to a non-work related medical condition until October 29, 2018, he is not considered able to work from the week beginning October 7, 2018 through the week ending October 27, 2018. Because he was released to return to work without restriction on October 29, 2018, he is considered able to work effective October 28, 2018. Benefits are withheld for the three week period ending October 27, 2018, but allowed effective October 28, 2018.

DECISION:

The October 24, 2018, (reference 02) unemployment insurance decision is modified in favor of the claimant. Benefits are withheld for the three week period ending October 27, 2018, as claimant was not able to and available for work. The claimant is able to work and available for work effective October 28, 2018. Benefits are allowed beginning October 28, 2018, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs