

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER M WYLIE
Claimant

APPEAL 17A-UI-11124-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/28/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Christopher M. Wylie (claimant) filed an appeal from the October 23, 2017, reference 04, unemployment insurance decision that denied benefits based upon the determination he is not able to and available for work effective May 28, 2017. After due notice was issued, a telephone conference hearing was held on December 1, 2017. The claimant participated and was represented by Attorney Alan M. Daut. The Claimant's Exhibits 1 through 5 were received.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective May 28, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant most recently worked full-time as a Housekeeper at the hotel at Prairie Meadows Race Track and Casino (Prairie Meadows). On February 21, 2017, the claimant experienced a non-work related illness. He was short of breath and was diagnosed with a heart issue that impairs his ability to work among other things. The claimant was placed on job protected leave under the Family Medical Leave Act.

The claimant also applied for and received Short-Term Disability (STD) insurance payments in the amount of \$308.00 each week beginning February 28, 2017. The claimant's most recent STD check covers the time period through August 28, 2017. (Exhibits 1 and 2). Prairie Meadows maintains and pays for the STD insurance. The claimant did not pay any part of that employment benefit. The claimant did not report any of his weekly STD payments on his continued weekly claims for unemployment insurance benefits.

On May 30, 2017, the claimant's doctor released him back to work with restrictions including maximum eight hour workdays, occasional vacuuming no greater than a 12 by 12 foot area, no pushing, pulling, or lifting to exceed ten pounds, occasional bending, no climbing, and a break

from work every 30 to 60 minutes as needed. (Exhibit 4). Prairie Meadows determined it did not have a position for him and separated him from his employment. At the same time, the claimant applied for Social Security Disability (SSD) benefits and stated in his application that he was unable to work. (Exhibit 3)

The claimant filed his claim for unemployment insurance benefits effective May 28, 2017. He has searched for work each week he has filed a continued weekly claim for benefits. The claimant has only applied for janitorial or housekeeping positions as they are the only jobs he is capable of doing due to his education and job experience.

On October 10, 2017, the claimant's doctor wrote a note on his behalf to support his claim for SSD stating that the claimant has been unable to work since February 21, 2017 due to significant heart and lung issues. She went on to state, "He has worked as a stock person and house keeper but cannot currently work either of those jobs due to continued shortness of breath. It is unclear at this time when or if he will be able to return to that type of work for which he has training and experience." (Exhibit 5). The claimant continues to experience health issues and is unable to walk around a retail store for more than 30 minutes without sitting down and taking a break.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective May 28, 2017. Benefits are denied.

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) 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.

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.

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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant is still under medical care and his doctor does not believe he is capable of returning to work in his customary occupation. An individual claiming benefits does not normally have to be able to work in his customary occupation to be eligible for benefits; however, in this case, the testimony

and evidence supports that the only positions for which the claimant possess the proper education and experience is his customary occupation. He has not established that he is currently able to work a reasonably suitable, comparable full-time endeavor that fits within his current medical restrictions. Accordingly, he is not eligible for unemployment insurance benefits. Benefits are denied.

DECISION:

The October 23, 2017, reference 04, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective May 28, 2017. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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