

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT R HOHENSHELL
Claimant

CHRISTIAN RETIREMENT SERVICES INC
Employer

APPEAL 19A-UI-01685-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/27/19
Claimant: Appellant (2R)

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 February 20, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to injury. The parties were properly notified of the hearing. A telephonic hearing was held on March 12, 2019. The claimant, Robert R. Hohenshell, participated and was represented by John Geyer, non-attorney representative. The employer, Christian Retirement Services, Inc., did not register a telephone number at which to be reached and did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective January 27, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a carpenter and drywall installer, beginning July 25, 2016. In September 2018, claimant had an injury at work. He returned to work in December 2018. Claimant last reported to work on January 14, 2019. That day, claimant fell and threw his back out. He met with the Director of Human Resources after this fall and she initially told him to go to Occupational Health. She then said she needed to make a phone call and left the room. When she returned, she told claimant that the work comp agent told her to tell claimant to go home and call his lawyer. Claimant was never permitted to return to work after that date. Claimant felt better several days after January 14, but he was not allowed to return. He called his workplace every day and was told he could not come back until he sent a doctor's note. Claimant provided a doctor's note after an appointment on January 24, 2019, but this note was not sufficient for claimant to return to work.

Claimant separated from employment on February 21, 2019. This separation from employment has not yet been the subject of a fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to work. Benefits are allowed, provided he is otherwise eligible.

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(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.

In order to be eligible for benefits, an individual must be physically able to work. Claimant provided unrefuted testimony that he threw his back out at work and was ready to return to work after several days. Claimant provided the employer with a doctor's note, but he was still not permitted to return to work. The evidence presented at the hearing establishes that claimant is physically able to work. Benefits are allowed, provided he is otherwise eligible.

The issue of claimant's separation from employment will be remanded for further investigation.

DECISION:

The February 20, 2019, (reference 01) unemployment insurance decision is reversed. Claimant is able to work effective January 27, 2019. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant's separation from employment is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn