

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY L WINKLER
Claimant

ALLIED BLENDING & INGREDIENTS INC
Employer

APPEAL 18A-UI-00095-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/10/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 28, 2017, (reference 02) unemployment insurance decision that denied benefits as of December 10, 2017. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2018. Claimant participated. Employer participated through accounting assistant Michelle Monroe. Claimant Exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the claimant able to work and available for work effective December 10, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a warehouseman (claimant drove a fork-truck) from November 10, 1997, and was separated from employment on December 7, 2017. On September 18, 2008, claimant had a heart transplant and was off work until around September 2009. When claimant returned to work, he was under medical restrictions.

The most recent work restriction the employer received from claimant was January 10, 2010, which precluded claimant from lifting more than thirty pounds. Claimant was also precluded from sweeping and was advised to wear a mask when the floor was being swept. Claimant was also advised to carry water with him while he worked.

Claimant “completed a functional evaluation and lifting assessment in March of 2014[.]” which allowed claimant to “complete all the activities included in his job description with the exception of lifting over 30 lbs and sweeping[.]” Claimant Exhibit A. It was also recommended that claimant have a mask when the area was being swept and to carry water while he was working. Claimant Exhibit A. The employer complied with claimant’s work restrictions.

Claimant was able to work full-time for the employer with work restrictions since he returned to work in September 2009 until he was separated on December 7, 2017. After claimant was separated, he was still able to and available for work as long as the job complied with his work restrictions. Prior to working for the employer, claimant managed a jewelry store for approximately fifteen years and went to college for two years to be a jeweler. Since claimant filed a claim for benefits with an effective date of December 10, 2017, he has made at least two job contacts per week and is able to and available for work. Claimant's only restrictions are his medical work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work effective December 10, 2017.

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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

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 has been able to work full-time since September 2009 under his current work restrictions, he has established his ability to and availability for work even with his work restrictions. Claimant also testified he has experience in retail and sales from his time managing a jewelry store. Since claimant filed a claim for benefits effective December 10, 2017, he has been able to and available for work and has made at least two employer contacts each week. Benefits are allowed effective December 10, 2017.

DECISION:

The December 28, 2017, (reference 02) unemployment insurance decision is reversed. Claimant is able to work and available for work effective December 10, 2017. Benefits are allowed, provided claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:

<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<https://www.iowaworkforcedevelopment.gov/> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>