

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID E HOTH
Claimant

CVG MONONA WIRE LLC
Employer

APPEAL NO. 20A-UI-09604-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/20
Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

David Hoth filed a timely appeal from the August 5, 2020, reference 01, decision that denied benefits effective April 19, 2020, based on the deputy's conclusion that the claimant was unable to work due to illness. After due notice was issued, a hearing was held on September 25, 2020. Mr. Hoth participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period of April 19, 2020 through May 30, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Hoth established an original claim for benefits that was effective April 19, 2020. Iowa Workforce Development set his weekly benefit amount at \$345.00. CVG Monona Wire, L.L.C. is the sole base period employer. Mr. Hoth made weekly claims for the six weeks between April 19, 2020 and May 30, 2020 and received regular and Federal Pandemic Unemployment Compensation (FPUC) for each of those weeks. Mr. Hoth discontinued his claim following the week that ended May 30, 2020.

CVG Monona Wire is Mr. Hoth's most recent employer. Mr. Hoth began his employment with CVG Monona Wire in February 2019. Shortly before Mr. Hoth began the employment, he began to suffer brief periodic bouts of what he describes as pneumonia. Early in the employment, Mr. Hoth worked in "circuit prep." Mr. Hoth moved on to a "braider" position. The braider position required significant lifting. Mr. Hoth's usual work hours were 5:00 a.m. to 3:30 p.m., four days a week. His final wage was \$11.78 an hour. Mr. Hoth worked as a "braider" until April 16, 2020, when he collapsed at work due to pneumonia and severe chest pain.

After Mr. Hoth collapsed on April 16, he drove himself to the emergency room. The emergency room personnel suspected Mr. Hoth had COVID-19 and had him transported by ambulance to a hospital in Lacrosse, Wisconsin. In Lacrosse, Mr. Hoth was initially placed in the COVID-19 ward, while the hospital staff waited for the result of his COVID-19 test. The COVID-19 test was negative. Mr. Hoth was then transferred to the cardiopulmonary ward. Mr. Hoth underwent several diagnostic tests that revealed heart issues. The medical staff were concerned that Mr. Hoth may have suffered a heart attack prior to arriving at the hospital. Mr. Hoth was subsequently referred for open-heart surgery. The open-heart surgery was initially scheduled for June 2020, but was pushed back to July 23, 2020.

On Saturday, April 18, 2020, Mr. Hoth was discharged from the hospital. Mr. Hoth was released to return to work on April 19, 2020 with a 10-pound lifting restriction and a further restriction that he only performed light-duty work. Mr. Hoth's usual duties required that he be able to perform heavy lifting.

When Mr. Hoth attempted to return to work on April 20, 2020, the employer denied access to its facility. The employer told Mr. Hoth had to quarantine for 14 days because he had traveled to a "hot zone." The employer provided Mr. Hoth with a short-term disability/FMLA application. Mr. Hoth took the materials to his doctor. His doctor completed the medical certification and emailed the materials to the employer. The doctor indicated that Mr. Hoth's medical condition was non-work-related. The doctor indicated that Mr. Hoth was released to work, but only to non-stressful duties and subject to the lifting restriction. On April 21, 2020, the employer told Mr. Hoth that he could not return to the employment until he was fully released to perform his regular duties. Mr. Hoth needed an income and was interested in returning to the employment in some capacity.

On May 4, 2020, following the 14-day quarantine, the employer had imposed on or about April 20, Mr. Hoth again contacted the employer, and asked to return the employment. The employer declined the request and cited the lifting restriction. Mr. Hoth notified the employer that he had medical appointments set for May 5 2020 and May 11, 2020 in Lacrosse, Wisconsin and that the appointments would include discussion of whether the lifting restriction could be lifted. The employer told Mr. Hoth that even if the medical restrictions were lifted, he would be required to self-quarantine after each medical appointment because he would be traveling to a "hot zone."

At some later point, Mr. Hoth applied for a stocking position at Walmart, but could not meet the 50-pound lifting requirement.

In July 2020, Mr. Hoth underwent open-heart surgery.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(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(1) provides:

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.

Because Mr. Hoth only made weekly claims for the six weeks between April 18, 2020 and May 30, 2020, this decision need only address those six weeks. The weight of the evidence

establishes that Mr. Hoth was unable to work and unavailable for work within the meaning of the law during the period of April 18, 2020 through May 30, 2020. The evidence establishes that Mr. Hoth was unable to perform his regular duties at CVG Monona Wire throughout the period of April 18, 2020 through May 30, 2020, due to his medical conditions and medical restrictions. On April 21, 2020, the employer put Mr. Hoth on notice that he would not be allowed to return to the employment unless and until he was released to perform his regular duties. A reasonable person would conclude, in light of Mr. Hoth's health issues and the physically taxing nature of the employment, that such release would never occur. However, Mr. Hoth unreasonably held out hope that he might be released to return to the employment and refrained from seeking other employment for an extended, unspecified period. When Mr. Hoth ultimately applied for another job, it was a job that a reasonable person would readily discern he was not physically capable of performing in light of his medical condition and his medical restrictions. Mr. Hoth continued under a doctor's care and continued to suffer from a serious medical condition that a reasonable person would conclude prevented him from being able to work. The administrative law judge notes that Mr. Hoth has not provided any medical documentation for the administrative law judge's consideration. Mr. Hoth has presented insufficient evidence to provide that he was able to work or available for work during the period of April 18, 2020 through May 30, 2020. Mr. Hoth is not eligible for benefits for that period.

DECISION:

The August 5, 2020, reference 01, is affirmed. The claimant was not able to work or available for work within the meaning of the law during the period of April 18, 2020 through May 30, 2020 and is not eligible for benefits for that period.



James E. Timberland
Administrative Law Judge

October 14, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**