

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES A SCHMITZ
Claimant

JOHN DEERE CEC - DUBUQUE WORKS
Employer

APPEAL 21A-UI-20951-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/01/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On September 20, 2021, the claimant, Charles Schmitz, filed an appeal from the September 17, 2021 (reference 01) unemployment insurance decision that determined that claimant was unable to work due to being on a vacation denied benefits from 08/01/21 through 08/07/21. The parties were properly notified of the hearing. A telephonic hearing was held on November 17, 2021. The claimant participated. The employer, John Deere CEC – Dubuque Works, failed to respond to the hearing notice and provide a telephone number at which they could be reached for the scheduled hearing. Claimant offered his paystubs, which were admitted as exhibits. Judicial notice was taken of the administrative record.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds John Deere CEC - Dubuque Works employed claimant in a full time capacity, and claimant was paid vacation pay by employer for the week in question. The vacation pay was incorrectly paid and reported during the week it was reported, but that was a week of John Deere CEC – Dubuque Works shut down, where claimant could not work. Claimant was able and available to work, but the plant was on its annual two week shut down. As such, there was no vacation during the time it was reported, as it was incorrectly reported.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was in fact NOT on vacation and was otherwise able and available for work, but could not go to work due to employer's annual two week shut down.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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.

John Deere was on shut down for the week in question and erroneously paid vacation benefits for that week. Claimant was otherwise able to and available for work. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The September 17, 2021 (reference 01) unemployment insurance decision is **REVERSED**. Claimant was able to work and available for work. There was no vacation, but a plant shut down.

Benefits are allowed, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

December 30, 2021
Decision Dated and Mailed

dh/mh