

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY L KELLY
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 17A-UI-00424-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/18/16
Claimant: Appellant (2)

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 January 9, 2017, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to perform work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2017. The claimant, Jeremy L. Kelly, participated. The employer, Wells Fargo Bank, N.A., participated through Dena Miller, customer service supervisor; and Shelly Law, customer service manager; and Dena Shelton of Barnett Associates represented the employer. Claimant's Exhibit A and Employer's Exhibit 1 were received and admitted into the record without objection.

ISSUE:

Is the claimant able to work and available for work effective December 18, 2016?

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 customer service representative, from December 14, 2015, until December 16, 2016, when he resigned.

Claimant initiated a text message conversation with Miller on the date of his resignation. Claimant told Miller that his second extension request for his short-term disability leave had been denied and would not be overturned. Claimant then asked whether he could get unemployment if he resigned from his position. He stated he was trying to figure out his options, and he said he knew he could not perform his job. Claimant testified that he was able to work and wanted to return to his employment, though he did not feel he was 100% better yet. Claimant began applying for jobs around the time he began applying for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the period in question. Benefits are allowed, provided claimant was 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(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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, the administrative record reflects that claimant has been making at least two job contacts each week. While he was not prepared to return to his employment with this employer, it appears he was able to perform some work. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The January 9, 2016, (reference 03) unemployment insurance decision is reversed. The claimant is able to work and available for work effective December 18, 2016. Benefits are allowed, provided claimant is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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