

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARRELL W DOSS

Claimant

APPEAL 18A-UI-09866-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

C H WILSON TRANSPORT INC

Employer

OC: 02/11/18

Claimant: Appellant (1)

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

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 18, 2018, (reference 01), unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work because he was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 11, 2018. Claimant participated and testified. Employer participated through Human Resource and Safety Director Cris Parker.

ISSUE:

Is the claimant able to and available for work effective September 2, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 11, 2018. Claimant last worked as a full-time truck driver until he began a leave of absence on August 31, 2018. On June 16, 2018, while at work, claimant experienced an intense and sharp pain in his groin area. Claimant immediately reported the injury to his employer at the time it occurred and a worker's compensation claim was filed. The employer's worker's compensation carrier determined the injury was work related and made total temporary disability (TTD) benefit payments to claimant from the time of his injury until September 29, 2018, as it determined he had reached maximum medical improvement (MMI). Claimant saw several doctors and underwent several tests, but his doctors have been unable to identify the problem. Claimant was released to return to work without restriction on August 30, 2018, but when he attempted to perform his job duties, found the pain to be too much. As such, claimant requested, and was granted, a leave of absence while he sought continued medical evaluation. Claimant is currently on his leave of absence and still being treated by medical professionals, but has not been given any restrictions from his treating providers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective September 2, 2018.

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.

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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

The evidence shows claimant did suffer a work-related injury in June 2018. However, claimant has been released to return to work without restriction, meaning there are no restrictions for the employer to reasonably accommodate. Inasmuch as claimant removed himself from work without a medical directive, he is not considered able to or available for work. Should claimant as some point obtain a medical directive that he is not able to work without restriction, there must be an evaluation of whether employment, with reasonable accommodation if appropriate, is available.

DECISION:

The September 18, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective September 2, 2018. Benefits are withheld until such time as claimant makes himself available for work.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs