

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MICHAEL L BROWN**  
Claimant

**APPEAL NO. 20A-UI-07923-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/15/20**  
**Claimant: Appellant (4)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.6(2) – Final Agency Decision

**STATEMENT OF THE CASE:**

Michael Brown filed a timely appeal from the July 14, 2020, reference 03, decision that *allowed* benefits effective June 28, 2020, provided Mr. Brown met all other eligibility requirements, based on the deputy's conclusion that Mr. Brown was available for work and medically able to work. Mr. Brown's intent in filing the appeal was not to challenge the decision that allowed benefits, but was instead to request benefits for the period beginning March 15, 2020 through June 27, 2020. After due notice, an appeal hearing was held on August 18, 2020. Mr. Brown participated and waived notice on the jurisdictional and substantive issues pertaining to whether he was able to work, available for work, and eligible for benefits for the period of March 15, 2020 through June 27, 2020. Exhibits A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, NMRO, and the April 30, 2020, reference 01 decision and the April 30, reference 02, decision.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning June 28, 2020.

Whether the claimant was able to work, available for work, and eligible for benefits for the period of March 15, 2020 through June 27, 2020.

Whether and to what extent the administrative law judge jurisdiction to allow benefits for a period prior to June 28, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Brown established an original claim for benefits that was effective March 15, 2020 and has made consecutive weekly claims since the established original claim. For each claim week, Mr. Brown reported that he was able to work, was available for work, had not refused any work,

and had made two or more job contacts. Mr. Brown resides in Johnston, a suburb of Des Moines.

Prior to establishing the claim for benefits, Mr. Brown had been dealing for several months with a torn rotator ligament in his right shoulder. Mr. Brown is right-handed. Mr. Brown had suffered repeated injury to that shoulder and the repeated injury precluded surgical repair of the shoulder injury. In the months that preceded Mr. Brown's unemployment insurance claim, Mr. Brown and his doctor followed a course of treatment they hoped would leave to the shoulder repairing itself to the extent possible. During that time, Mr. Brown's doctor restricted Ms. Brown from using his right shoulder. Effective March 3, 2020, Mr. Brown's doctor imposed a permanent 30-pound lifting restriction. From that date, Mr. Brown has had no other work restrictions. See Exhibit B. Mr. Brown had worked as an assembler, assembling electrical harnesses for HVAC systems. Though Mr. Brown was no longer able to perform that type of work, he had not discussed with his doctor other types of work he might be able to perform. At the time Mr. Brown established the March 15, 2020 claim for benefits, he began by looking for other types of assembly work because that was the work he was used to doing. Mr. Brown knew that he could not perform heavier manufacturing work. Mr. Brown applied for work at an order fulfillment center, wherein the work would require him to collect parts to fill orders. Mr. Brown applied for work at Hy-Vee, but learned he did not meet the lifting requirement. Mr. Brown applied for various warehouse positions.

On April 29, 2020, Mr. Brown participated in a fact-finding interview that addressed his September 2019 separation from employer Randstad and whether he was had been able to work and available for work since he established the claim for benefits that was effective March 15, 2020. By the time of the April 29, 2020 fact-finding interview, Mr. Brown had filed weekly claims for the period of March 15, 2020 through April 25, 2020.

On April 30, 2020 and Iowa Workforce Development Benefits Bureau deputy entered a reference 01 decision regarding the employment separation and a reference 02 decision regarding the able and available issues. In the reference 01 decision regarding the separation, the deputy held Mr. Brown was eligible for benefits, provided he met all other eligibility requirements, based on the deputy's conclusion that the September 6, 2019, voluntary quit from Randstad US, L.L.C. was due to a work-related injury and non-disqualifying. The deputy entered an reference 02 decision that *denied* benefits for the period beginning March 15, 2020, based on the deputy's conclusion that Mr. Brown was unable to work in his usual occupation, had not established what other types of work he could do and was willing to do, was unduly limiting his availability for work, and therefore did not meet the availability requirements. The reference 02 decision stated that if Mr. Brown's circumstances changed, and if he believed the disqualification could be removed, he should contact Iowa Workforce Development. The April 30, 2020, reference 02, decision indicated that the decision would become final unless an appeal from the decision was filed by May 10, 2020.

On Tuesday, May 5, 2020, Mr. Brown emailed a March 3, 2020 medical note to the UI Claims Help inbox at Iowa Workforce Development as his proof that he was able to work. The note was from Dr. Marc Molis, M.D. of UnityPoint Clinic Sports Medicine in Urbandale. The note indicated that Dr. Molis had evaluated Mr. Brown on March 3, 2020 and released him to work with a 30-pound lifting restriction. Mr. Brown had not provided the note for the April 29, 2020 fact-finding, but was attempting to supplement the evidence as directed in the April 30, 2020, reference 02, decision. Mr. Brown did not file an appeal from the reference 02 decision by the May 10, 2020 appeal deadline and the decision became a final agency decision denying benefits effective March 15, 2020. The May 5 submission of the March 3 medical note did not

prompt the Benefits Bureau to issue a new or amended decision on the able and available issues.

From the time that Mr. Brown established the March 15, 2020 original claim until June 1, 2020, Mr. Brown participated in physical therapy for his shoulder twice per week.

On June 18, 2020, Mr. Brown called Iowa Workforce Development, spoke with an Agency representative, and resubmitted the March 3, 2020 medical note. On June 23, 2020, the Iowa Workforce Development representative who had conducted the April 29, 2020 fact-finding interview contacted Mr. Brown. The representative acknowledged receipt of the medical note, but advised Mr. Brown that he needed to provide a list of the jobs he could perform with his lifting restriction. Mr. Brown promptly submitted the requested list.

On July 14, 2020, Mr. Brown called Iowa Workforce Development and spoke to a different Agency representative. The Agency representative told Mr. Brown of the July 14, 2020, reference 03, decision that allowed benefits effective June 28, 2020, provided Mr. Brown was otherwise eligible, based on the deputy's conclusion that Mr. Brown was available for work and medically able to work. Mr. Brown indicates the Agency representative with whom he spoke on July 14, 2020 said the representative would make the July 14, 2020, reference 03, decision retroactive. It is unclear what authority the Agency representative would be acting under to set the effective allowance date to a date prior to the one selected by the deputy who rendered the July 14, 2020, reference 03, decision. The July 14, 2020, reference 03, decision include a July 24, 2020 deadline for appeal. Mr. Brown's July 14, 2020 contact with the Agency representative did not prompt the Agency to issue an amended or new decision regarding the able and available issues.

On July 21, 2020, Mr. Brown called Iowa Workforce Development and spoke to yet another Agency representative regarding his desire to make the benefit allowance set forth in the July 14, 2020, reference 03, decision retroactive to a date earlier than June 28, 2020. At that time, the Agency representative told Mr. Brown that he needed to file an appeal from the July 14, 2020, reference 03, decision. On July 21, 2020, Mr. Brown submitted an appeal to the Appeals Bureau.

#### **REASONING AND CONCLUSIONS OF LAW:**

Mr. Brown's requested to make the able and available allowance effective prior to June 28, 2020 is not a run-of-the-mill retroactive benefits request, such as a failure to establish an original claim by a particular date or a failure to make timely weekly claims. Mr. Brown had done both of those things. Instead, the questions the administrative law judge had to wrestle with concern jurisdiction to disturb Benefits Bureau decisions and the substantive questions of when Mr. Brown began to satisfy the able and available requirements.

Iowa Code section 96.6(2) provides, in pertinent part, as follows:

2. Initial determination.

...

Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

In the absence of an appeal from the April 30, 2020, reference 02, decision that denied benefits for the period beginning March 15, 2020, based on the able and available determination, the administrative law judge has no authority to disturb that decision.

So the next question becomes what period of the claim did April 30, 2020, reference 02, decision control? By the time of the April 29, 2020 fact-finding interview, Mr. Brown had filed weekly claims for the period of March 15, 2020 through April 25, 2020. That was, at minimum, the period within the deputy's consideration and jurisdiction. Based on the absence of an appeal from April 30, 2020, reference 02, decision, the administrative law judge would have no authority to disturb the deputy's determination that Mr. Brown had not met the availability requirement for the period of March 15, 2020 through April 25, 2020. Accordingly, the request to push back the able and available allowance date to a date prior to April 26, 2020 must be denied.

The next question is how far forward did the deputy's April 30, 2020 reference 02, decision reach. The decision on its face indicates that it is not limited to the benefit weeks that preceded the decision. The decision speaks primarily in the present tense when it states:

Our records indicate you *are* not able to work in your usual occupation. You have not established what other types of work you can do and *are* willing to do. This *is* unduly limiting your availability for work. Therefore you *do* not meet the availability requirements.

The April 30, 2020, reference 02, decision speaks prospectively in stating what must happen for the decision to be amended or for a new decision to be entered in the absence of an appeal from the decision:

To become eligible for benefits:

If the circumstances have changed and you believe the disqualification can be removed, you should contact your local Workforce Development Center...and request that it be removed.

Mr. Brown made such contact on May 5, 2020, when he contacted Iowa Workforce Development and provided the March 3, 2020 medical note that stated in essence that he was able to perform any work that did not require him to lift greater than 30 pounds. Accordingly, the administrative law judge concludes that the administrative law judge's jurisdictional authority begins with the week of May 3-9, 2020.

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.

Mr. Brown's medical note, dated March 3, 2020, first presented to Iowa Workforce Development on May 5, 2020, is prima facie evidence of Mr. Brown's physical ability to perform work that does not require lifting greater than 30 pounds. The note does not restrict Mr. Brown to performing a particular type of work within that restriction. Under normal, non-COVID-19 circumstances, a reasonable person would expect many types of labor to be open to Mr. Brown in the Des Moines metropolitan labor market despite the 30-pound lifting restriction. Even in a

market impacted by COVID-19, a reasonable person would expect many types of labor to be open to Mr. Brown despite the 30-pound lifting restriction. The evidence indicates that Mr. Brown did indeed pursue work within his restrictions and remained available for work within his restrictions. The administrative law judge notes that the Agency suspended the work search requirement from mid-March 2020 through September 7, 2020.

Mr. Brown was able to work and available for work effective May 3, 2020. Benefits are allowed effective May 3, 2020, provided Mr. Brown is otherwise eligible.

**DECISION:**

The July 14, 2020, reference 03, decision is modified in favor of the claimant/appellant as follows. The claimant was able to work and available for work effective May 3, 2020. Benefits are allowed effective May 3, 2020, provided the claimant is otherwise eligible.



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James E. Timberland  
Administrative Law Judge

October 7, 2020  
Decision Dated and Mailed

jet/scn