

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JOSE AVALOS MARTINEZ

Claimant

and

SWIFT PORK COMPANY

Employer

HEARING NUMBER: 18BUI-08573

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board modifies the Reasoning and Conclusions of Law to clarify that the standard of being able and available for work is independent of whether the injury is work-related or not.

871 IAC 24.22 expounds on this:

871—24.22 Benefit 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.

24.22(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.

The reasons that can render an individual no longer available to work include:

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(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.

871 IAC 24.23(34)-(35).

"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 v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). 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.* Generally the worker must be "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." 871 IAC 24.22(2).

The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. 871 IAC 24.22; Iowa Code §96.6(2). Given the restrictions proven in the record, the legal standard including the directive of *Sierra*, and the experience and training of the Claimant we do affirm the Administrative Law Judge's finding that the Claimant failed to prove he was able and available to work in some reasonably suitable, comparable, gainful, full-time endeavor which is generally available in the labor market in which he resides.

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. In particular the basis of the Claimant's remand request is the assertion, made through counsel, that a transcript he has of the hearing contains portions designated as inaudible and that therefore the case must be remanded. The Claimant has not identified what

material information he feels is missing. Moreover all three members of the Board each, and independently, listen to a digital recording of the hearing and do not rely solely on the submitted transcript. We detect no material information missing. Therefore, the remand request is **DENIED**.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv