

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALAN W RILEY
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 17A-UI-01378-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/15/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 3, 2017, (reference 02) unemployment insurance decision that denied benefits as of January 15, 2017. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2017. Claimant participated. Employer participated through Human Resources Generalist, Sarah Fiedler.

ISSUE:

Is the claimant able to work and available for work effective January 15, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. Claimant was hired by the employer on November 22, 2016. Claimant was first assigned as a general laborer, full-time, temp-to-hire, at Winegard on November 22, 2016. Claimant testified he hurt his back on November 29, 2016, while working on the assignment. Claimant did not report the injury to the employer on November 29, 2016. Claimant did not report the injury to Winegard on November 29, 2016. Claimant testified he went to the emergency room on November 29, 2016 and was advised to use ice and follow-up with a doctor. On November 30, 2016, claimant reported his injury to his assignment and the employer. On December 1, 2016, claimant went to the employer's work comp doctor. The employer's work comp doctor placed claimant on light duty. The employer's work comp doctor could not determine at that time if it was a work related injury. Claimant took his work restrictions to the employer. Winegard could not accommodate claimant's work restrictions and he was removed from that assignment.

The employer does have some clients, including the Salvation Army, that will employ its employees in light duty assignments if the light duty is a result of a work related injury. On December 7, 2016, claimant was assigned at the Salvation Army as a light duty employee. Claimant was placed at the Salvation Army until a determination was made as to whether his injury was work related. On January 16, 2017, claimant received a report from his doctor that stated his injury was "not an acute work related issue." On January 19, 2017, the employer informed claimant that because his injury and resulting work restrictions were determined to be not due to a work related injury, his assignment with the Salvation Army has ended and he was

also separated from the employer. The employer was not able to accommodate claimant's non-work related injury.

Since claimant's separation, he has been performing two job contacts a week. Claimant is still on the same work restrictions. Claimant's work restrictions prohibit him from twisting, bending, and kneeling. Claimant's work restrictions also prohibit him from pushing, lifting, or pulling more than twenty pounds. Claimant has a prior work history of working in a factory, driving a trolley and working as a sales person.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work effective January 15, 2017.

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(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 physician 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant suffered an injury and was placed on work restrictions on December 1, 2016. Claimant's work restrictions have not been lifted. Even though claimant has been under work restrictions since December 1, 2016, he has shown he can perform some work under the work restrictions. From December 7, 2016 until January 19, 2017, claimant was assigned and worked at the Salvation Army. Claimant was then separated from the assignment and the employer on January 19, 2017 because the doctor determined that claimant's injury was not work related. Since claimant's separation, he testified he has been performing two job contacts a week; however, claimant also testified that not all of the jobs meet his work restrictions.

Even though claimant provided testimony that since his separation from the employer he has applied for jobs that do not meet his work restrictions, he has established that since he was injured he is able to perform some work as evidenced by his assignment and work at the Salvation Army. Although the employer is not obligated to accommodate a non-work related medical condition, inasmuch as the employer allowed claimant to work in a light duty assignment for a period of time, claimant has established his ability to and availability for work. Benefits are allowed effective January 15, 2017.

Because claimant was separated from the employer on January 19, 2017, he is no longer obligated to return to employer upon his medical release to offer his services. Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits. Furthermore, claimant's work searches must be for employment that complies with any current work restrictions.

DECISION:

The February 3, 2017, (reference 02) unemployment insurance decision is reversed. Claimant is able to work and available for work effective January 15, 2017. Benefits are allowed, provided claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs