

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NICK J BELL

Claimant

APPEAL NO. 16A-UI-05617-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC

Employer

OC: 04/24/16

Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Nick Bell filed a timely appeal from the May 13, 2016, reference 01, decision that denied benefits effective April 24, 2016, based on an Agency conclusion that Mr. Bell was unable to perform work due to illness. After due notice was issued, a hearing was held on June 6, 2016. Mr. Bell participated. The employer did not respond to the hearing notice instruction to register a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nick Bell established a claim for unemployment insurance benefits that was effective April 24, 2016. Mr. Bell's most recent employer was Goodwill Industries of Northeast Iowa, Inc. Mr. Bell last performed work for Goodwill on April 25, 2016. Mr. Bell worked for Goodwill as a part-time sales associate at a Goodwill facility in Independence. Mr. Bell resides in or near Independence. Mr. Bell's duties at Goodwill included going through boxes of donated clothes to sort the usable clothing from the unusable clothing. Mr. Bell worked 40 to 50 hours per two-week pay period. Mr. Bell receives Social Security Disability Insurance (SSDI) benefits. To maintain his eligibility for those benefits, Mr. Bell has customarily restricted his monthly income to \$1,000.00 or less. Goodwill scheduled Mr. Bell in such a way as to keep him within SSDI eligibility requirements. Goodwill is Mr. Bell's only base-period employer. The arrangement described above was the arrangement throughout the base period.

Mr. Bell established his claim for unemployment insurance benefits in response to being discharged from Goodwill. Mr. Bell suffers from schizophrenia. Mr. Bell's discharge from Goodwill occurred in the context of a change in Mr. Bell's psychotropic medication regimen that resulted in Mr. Bell being absent from work.

Mr. Bell receives evaluation and treatment for his mental health condition through Abbe Center for Community Mental Health in Independence. Erich Brueschke, a physician assistant (P.A.) located in Arizona, evaluates Mr. Bell's psychotropic medication needs and prescribes psychotropic medication to Mr. Bell. Mr. Brueschke periodically meets with Mr. Bell by means of videoconferencing.

At the time Mr. Bell established the claim for benefits that was effective April 24, 2016, he had most recently met with the physician assistant on April 7, 2016. In connection with that meeting, Mr. Brueschke noted current medications that included a 75 mg dose of Haldol Dec administered by injection every four weeks. At the time of that visit, P.A. Brueschke noted the following in his examination notes:

Significant improvement in patient's manner and mood this visit vs the last visit.

The patient is alert and oriented. Dress and hygiene are good. Looks stated age. Calm and cooperative. Good eye contact. No psychomotor agitation or retardation. Speech is normal. No pressure of speech. No thought disorder. Thoughts are goal directed. Affect is blunted. Mood is euthymic and appropriate. The patient denied any auditory/visual hallucinations. Paranoia is not noted. Insight and judgment are poor. Impulse control is fair. Memory is grossly intact. The patient is cognitively intact.

The physician assistant indicated that the Haldol dose would be decreased to 50 mg every four weeks. The physician assistant did not take Mr. Bell off work or impose work restrictions. The physician assistant's notes recommended a follow up visit in one month unless an earlier appointment became necessary.

Mr. Bell next met with P.A. Brueschke on May 5, 2016. Mr. Brueschke noted an increase in symptoms and increased the Haldol Dec dosage to 75 mg every 21 days. The physician assistant noted that Mr. Bell had recently lost his job. P.A. Brueschke's notes indicate that Mr. Bell should return for a follow up appointment in one month or sooner if needed. The physician assistant did not take Mr. Bell off work or impose work restrictions. The physician assistant's notes recommended a follow up visit in one month unless an earlier appointment became necessary.

At the time of the appeal hearing on Monday, June 6, 2016, Mr. Bell reported that he had a follow up medical appointment set for later that week. On June 7, 2016, pursuant to a release authorized by Mr. Bell, the Abbe Center for Community Mental Health provided the medical records referenced above.

Mr. Bell has made weekly unemployment insurance claims since he established his original claim for benefits. Mr. Bell had a car that is operational in town but in need of repair and not reliable for out of town travel. Mr. Bell had confined his job search to potential employers in or near Independence. For the week that ended April 30, 2016, the week during which Mr. Bell separated from Goodwill; Mr. Bell reported zero job contacts but actually made two job contacts. For claim weeks that ended on May 7, May 14, May 21, and 28, Mr. Bell made two job contacts.

Mr. Bell is aware of the limit that his chronic mental health condition places on his ability to gain and succeed in employment and has tailored his work search accordingly.

REASONING AND CONCLUSIONS OF LAW:

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 and (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.

(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.

(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.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

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.

For the reasons set forth below, the administrative law judge concludes that Mr. Bell has met the able and available requirements since he established his claim for benefits and is eligible for unemployment insurance benefits, provided he meets all other eligibility requirements. Mr. Bell suffers from a chronic mental health condition. Mr. Bell receives ongoing monitoring and treatment for that mental health condition. Mr. Bell's provider has not taken Mr. Bell off work and has not imposed any work restrictions that preclude Mr. Bell from performing the same sort of part-time work that Mr. Bell performed for Goodwill during his base period. Though Mr. Bell continues to experience variations in his functioning level, the weight of the evidence indicates that Mr. Bell has at all relevant times since he filed his claim for benefits been able and available to perform work of the same nature and to the same degree as the work he performed in the base period. In addition, Mr. Bell has satisfied the work search requirement for each week since he filed his claim.

DECISION:

The May 13, 2016, reference 01, decision is reversed. Since the claimant established his claim for benefits, he has been able to work and available for work to the same extent as during his base period. Accordingly, effective April 24, 2016, the claimant is eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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