

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD R POST**

Claimant

**APPEAL NO. 17A-UI-04602-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**

Employer

**OC: 04/09/17**

**Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Donald Post filed a timely appeal from the May 1, 2017, reference 01, decision that denied benefits effective April 9, 2017 due to the claims deputy's conclusion that Mr. Post was unable to work, and unavailable for work, due to surgery. After due notice was issued, a hearing was held on May 16, 2017. Mr. Post participated and presented additional testimony through Andy Snyder. The employer registered a telephone number for the hearing and listed John Miler as the employer's representative for the hearing. However, at the time of the hearing, Mr. Miler was not available at the telephone number the employer had registered for the hearing. The administrative law judge left the hearing record open for the limited purpose of allowing Mr. Post to submit medical documentation. Mr. Post provided medical documentation on May 17, 2017 and the administrative law judge received those materials into the hearing record as Exhibits B and C.

**ISSUES:**

Whether Mr. Post has been able to work and available for work within the meaning of the law since he established the claim for benefits that was effective April 9, 2017.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Donald Post began his full-time employment with Packers Sanitation Services, Inc. (PSSI) on December 9, 2016 and last performed work for the employer on the morning of April 7, 2017. Mr. Post worked as part of a sanitation crew assigned to the Osceola Foods plant in Osceola. Mr. Post's work hours were 11:30 p.m. to 6:30 or 7:00 a.m., seven days per week. Mr. Post's immediate supervisor was Andy Snyder. Before Mr. Post went off work in April, he was experiencing gallbladder issues and knew that he would need to undergo surgery to remove his gallbladder. Mr. Post had a gallstone lodged in a bile duct. The condition did not cause Mr. Post pain, but was of concern to Mr. Post's doctor. Mr. Post's doctor was concerned that another gallstone might exit Mr. Post's gallbladder and compound the issue with the gallstone already lodged in the bile duct. Mr. Post had told his doctor about the work he performed for PSSI. Mr. Post's doctor did not take Mr. Post off work, but advised Mr. Post to avoid heavy lifting. Mr. Post continued to be available to perform almost all of his sanitation and power

washing duties and only needed help with moving six tables. Mr. Snyder did not mind moving the tables and readily accommodated the request for help in moving the tables. Mr. Post's need for assistance in moving the tables did not disrupt the work of the sanitation crew.

On April 7, 2017, John Miler, PSSI Site Manager, directed Mr. Post to obtain medication documentation setting forth his specific medical restrictions. On that same day, Mr. Post provided the employer with a note from his doctor. The medical note released Mr. Post to return to work on April 10, 2017, but restricted Mr. Post for lifting, pushing or pulling more than 20 pounds through May 30, 2017. Mr. Miler directed Mr. Snyder to send Mr. Post "to corporate." Mr. Miler asserted that Mr. Post required a light-duty assignment and would have to go off work until he was released to return without restrictions. Mr. Post and Mr. Snyder continued to believe that Mr. Post was capable of performing his work duties despite the medical restriction provided Mr. Snyder continued to assist with moving the tables.

On Monday, April 25, 2017, Mr. Post underwent surgery to remove his gallbladder. The procedure went well. The discharge documentation that Mr. Post provided for the hearing indicates that he was restricted to lifting no more than 10 to 15 pounds for six to eight weeks following his procedure, but was otherwise released to return to activity "as tolerated." As of the May 16, 2017 appeal hearing, Mr. Post continued to anticipate that he would be released to return to work without restrictions effective May 30, 2017. As of the May 16, 2017, appeal hearing, Mr. Post and Mr. Snyder continued to anticipate Mr. Post's return to the employment at the end of May 2017.

Mr. Post established a claim for unemployment insurance benefits that was effective April 9, 2017. At the time Mr. Post filed the claim, he reported that he was still attached to the PSSI employment, but was temporarily laid off. Mr. Post has continued to make weekly claims.

## **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 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.

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.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

The evidence in the record establishes that the employer compelled Mr. Post to go off work despite indications from Mr. Post, Mr. Snyder, and Mr. Post's doctor that Mr. Post could continue to perform his regular work duties with a single, reasonable accommodation. The employer had an obligation to provide Mr. Post with reasonable accommodations that would allow him to continue in the work. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The evidence establishes that the employer was readily capable of providing Mr. Post with the reasonable accommodation he needed to continue working. The weight of the evidence establishes that Mr. Post was temporarily laid off, but able and available for work during the benefit weeks that ended April 16 and 23, 2017. Mr. Post is eligible for benefits for those two weeks, provided he meets all other eligibility requirements. Mr. Post was not available for work with the employer during the week that ended April 30, 2017, due to his need to undergo gallbladder removal on April 25, 2017, and his need to recover from that procedure. The weight of the evidence, specifically the medical discharge paperwork, indicate that Mr. Post has continued to be restricted to lifting no more than 10 to 15 pounds per week since his procedure, and that he continued under that restriction as of the May 16, 2017 appeal hearing. Due to the increased medical restrictions that have been in place since the procedure, the administrative law judge concludes that Mr. Post has not been able to work or available for work within the meaning of the law since he underwent his procedure on April 25, 2017. Benefits are denied effective the week that started April 24, 2017. The able and available disqualification continued as of the May 16, 2017 appeal hearing.

**DECISION:**

The May 1, 2017, reference 01, decision is modified as follows. The claimant was able to work, available for work, but temporarily unemployed during the two-week period of April 9-23, 2017 and is eligible for benefits for that week provided he meets all other eligibility requirements. The employer's account may be assessed for those benefits. Effective the week that started April 24, 2017, the claimant has not been able to work or available for work within the meaning of the law due to surgery and increased medical restrictions. Benefits are denied effective April 24, 2017. The able and available disqualification continued as of the May 16, 2017 appeal hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs