

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DALE W NEFF
Claimant

APPEAL NO. 18A-UI-02092-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/14/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) -- Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's unemployment insurance decision dated February 1, 2018, reference 03, which denied unemployment insurance benefits as of January 14, 2018, finding the claimant was not able to perform work due to illness. After due notice was provided, an in-person hearing was held in Council Bluffs, Iowa, on March 16, 2018, consolidated with appeal number 18A-UI-02091-TN. Claimant participated. The employer participated by Ms. Aby Binderup, Human Resource Manager; and Mr. Brenden Sheckler, Operations Manager.

ISSUE:

The issue is whether the claimant is able to work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Dale Neff was last employed by Toady's, LLC as a full-time cook. The claimant last reported for scheduled work on October 25, 2017. Claimant did not report thereafter because he was ill. Mr. Neff did not report for scheduled work Toady's LLC on October 28, 29, 31, November 1, 2, 2017 because he was ill. He did not return to this employment.

Mr. Neff maintains that he was "house-bound" due to illness and unable to work. The claimant attributes his illness to a hernia which blocks his intestinal tract, causing infection and other illnesses.

At the time of hearing, Mr. Neff was under a doctor's care. Claimant testified that he is suffering from a heart condition, as well as his hernia, and that he is unable to work because he is too ill.

In support of the claimant's position that he is too ill to work, Mr. Neff has submitted a doctor's statement dated February 2, 2018. (See Claimant's Exhibit A) That document confirms Mr. Neff's testimony that he is unable to work due to his medical condition and that his doctor has recommended that Mr. Neff not work until a later date, when more testing is complete and his physician will reassess the claimant's medical condition.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is able and available for work as required by the Employment Security Law. It does not.

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".

In order to meet the eligibility requirements of the Iowa Employment Security Law, the claimant must be able to work and available for work each week that unemployment insurance benefits are claimed. The claimant must be available and actively and earnestly seeking work, and must be physically able to perform work in some gainful occupation. The statement of a medical practitioner is prima facie evidence of the individual's medical condition, unless disproved by other evidence.

In this case, the medical statement prepared for Mr. Neff by his medical practitioner verifies that the claimant is not able to work due to illness at this time, and that the medical practitioner will later evaluate Mr. Neff's condition to determine his status at that time.

Because the claimant has not met the able to work requirement of the law, he is ineligible to receive unemployment insurance benefits. The adjudicator's unemployment insurance decision denying unemployment insurance benefits effective January 14, 2018, is correct.

DECISION:

The representative's unemployment insurance decision dated February 1, 2018, reference 03, is affirmed. Benefits are denied effective January 14, 2018. The claimant is not able to work due to illness. The claimant is disqualified for benefits until such time as he is released by a physician and provides sufficient documentation to his local Workforce Development center establishing that he is able work within the meaning of the Employment Security Law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs