

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EDGAR BATISTE**  
Claimant

**GENESIS DEVELOPMENT**  
Employer

**APPEAL 15A-UI-07915-CL-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 06/14/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 1, 2015, (reference 04) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on August 6, 2015. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a production worker beginning in December 2014, and was separated from employment on June 17, 2015, when he was terminated because he was physically unable to do the job.

Prior to April 2015, claimant was being treated for high blood pressure, diabetes, and high cholesterol. He also has issues with his back.

In April 2015, claimant applied for Social Security Disability benefits because of his back issues. On April 9, 2015, claimant was hospitalized. Claimant was diagnosed with double pneumonia and had a stent put in his heart. Claimant was discharged from the hospital on April 14, 2015. Claimant's cardiologist, Dr. Cookman, did not release claimant to work. However, claimant's doctor at the Veteran's Administration released claimant to work. Claimant returned to work, but could not physically perform the job. Claimant could not stand up for longer than five minutes because of his back. Claimant could not push the dumpster as he was required to do two times per day. Claimant is taking medication for his heart that makes him dizzy.

Claimant can perform work that does not require standing. He has applied for telemarketing positions and bartending positions. Claimant has not performed either type of work in the past decade.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 9, 2015.

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. Emp't Appeal Bd.*, 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. 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.*

Inasmuch as the illness was not work-related and claimant has not established he is physically able to perform the work for which he has experience, the claimant has not established the ability to work. Claimant asserts he can do telemarketing work, but he has not had a position in this field in the past ten years. Claimant also asserts he can work as a bartender, but this would require standing and he has not worked in the field in the past ten years. Benefits are withheld until such time as the claimant obtains a full medical release to return to work in a field in which he has experience and can obtain employment.

**DECISION:**

The decision of the representative dated July 1, 2015, (reference 04) is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective April 9, 2015.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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