

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES O OCHAYA
Claimant

CRESLINE PLASTIC PIPE CO INC
Employer

APPEAL 20A-UI-00250-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/01/19
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 30, 2019 (reference 04) unemployment insurance decision that found claimant not able to and available for work due to injury as of December 1, 2019. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2020, at 9:05 a.m. Claimant participated with his attorney Marlon Mormann. Employer participated through its attorney Jake Fulcher. Ralph Mericle, Plant Manager, was a witness for employer. Claimant's Exhibit A was admitted. Employer's Exhibits 1 – 4 were admitted.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant sustained a back injury on September 23, 2019. (Mericle Testimony) Claimant had been treated by a physician. (Claimant Testimony) Claimant had work restrictions limiting the weight that he could lift and certain movements like bending and twisting. (Claimant Testimony) Claimant has not been released to return to work without restrictions; however, claimant has identified work that he is able to do within his restrictions. (Claimant Testimony) Claimant has felt physically able to work since January 1, 2020. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work since January 1, 2020.

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".

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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant has established that he has been able to work since January 1, 2020. Claimant is eligible for unemployment benefits effective December 29, 2019.

DECISION:

The December 30, 2019 (reference 04) unemployment insurance decision is modified in claimant's favor. Claimant has been able to and available for work since January 1, 2020. Therefore, benefits are allowed effective December 29, 2019 provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn