

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON R ELLSWORTH
Claimant

APPEAL 18A-UI-06146-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/18/18
Claimant: Appellant (1)**

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:

Jason R. Ellsworth (claimant) filed an appeal from the May 23, 2018, reference 02, unemployment insurance decision that denied benefits as he was unable to work due to injury effective March 18, 2018. After due notice was issued, a telephone conference hearing was held on June 20, 2018. The claimant participated. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective March 18, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective March 18, 2018 following his separation from employment with Kiya-Koda Human Society. The claimant had injured his back while working in February 2018. The claimant did not seek any medical care for his back injury until May 22, 2018.

On May 7, 2018, the claimant had an appeal hearing with an administrative law judge regarding his separation. The claimant indicated that his back injury made it too painful for him to report to work. The claimant was ultimately allowed benefits but the issue of whether he was able to and available for work was remanded to the Benefits Bureau. (Administrative Law Judge Decision 18A-UI-04571-B2T)

On May 22, 2018, the claimant had a fact-finding interview with Iowa Workforce Development (IWD). During that interview, the claimant stated he was not able to and available for work. He went on to explain the doctor had removed him from work and he was to receive physical therapy. The unemployment insurance decision issued on May 23, 2018, reference 02, which is

the subject of this appeal, denied the claimant benefits effective March 18, 2018 as he was unable to work due to injury.

The claimant subsequently provided a doctor's note releasing him to work effective May 20, 2018 and IWD has allowed benefits since that date. (Unemployment Insurance Decision mailed May 31, 2018, reference 04) The claimant states he was able to and available for work from March 18 through May 19, 2018. He states that his back injury healed a few days before he separated from his former employer. He did not provide a doctor's note for the hearing stating that he was able to work prior to May 20, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work from March 18 through May 19, 2018. Benefits are denied.

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 provides, in relevant part:

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

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. The claimant's testimony that he was able to work from March 18 through May 19, 2018 is not credible based on his prior statements to IWD. The claimant indicated he hurt his back in February 2018 which prevented him from reporting to work and on May 22, 2018 he told IWD he was unable to work. His current testimony that his back injury healed just prior to his separation in March 2018 is not credible since he sought medical treatment for the same injury on May 22, 2018. The claimant has not provided any credible medical evidence that he was able to work and available to work during the relevant time period. The claimant has not met his burden to show he was able to work. Therefore, benefits are denied from March 18 through May 19, 2018.

DECISION:

The May 23, 2018, reference 02, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 18, 2018 through May 19, 2018. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs