

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS DIXON
Claimant

IA VETERANS HOME - MARSHALLTOWN
Employer

APPEAL 17A-UI-05892-NM

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/14/17
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 6, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his inability to work due to an injury. The parties were properly notified of the hearing. An in-person hearing was held on June 28, 2017 in Des Moines, Iowa. The claimant participated and testified. The employer participated through Division Administrator Penny Culter-Bermudez. Food Service Director Melissa Sienknecht was also present on behalf of the employer but did not testify. Claimant's Exhibits A through D and Employer's Exhibits 1 through 3 were received into evidence.

ISSUE:

Is the claimant able to work and available for work effective May 14, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a food service worker beginning April 14, 2014. In January 2017, claimant began experiencing pain in his neck and shoulders. Claimant saw his doctor, who concluded his pain was caused by a work-related injury that would need surgery to repair. On January 30, 2017, claimant's doctor restricted him from pushing or pulling carts by himself. (Exhibit C). On March 20, 2017, claimant's doctor further restricted him from lifting pots and pans. (Exhibit B). The employer initially accommodated claimant's restrictions, allowing him to perform other job duties. However, in March 2017, the employer's doctor concluded, following a 45 minute evaluation, he did not believe claimant's injury was work-related. There is currently ongoing litigation regarding whether claimant's injury was work-related.

On March 21, 2017 a meeting was held between the claimant and the employer, where claimant was informed the employer would no longer be accommodating his work restrictions. The employer testified it was not able to accommodate these restrictions any longer, but admitted that had its doctor concluded the injury was work-related, they would have continued on with the accommodation they had been in place since January. Once the employer concluded it would

no longer accommodate claimant, he was placed on a medical leave of absence. (Exhibit 2). Claimant testified he was willing, ready, and able to work, but could only do so within his restrictions. Claimant was on the medical leave of absence, beginning March 28, 2017, until June 27, 2017, when he was separated from employment. (Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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. 871-24.23(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 medical practitioner 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. Employment Appeal Board*, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Here, there is a dispute as to whether claimant's injury is work-related. Claimant testified his treating physician, whom he has been seeing since January 2017, determined the injury was work-related. The employer's doctor came to a contrary conclusion following one 45 minute evaluation. Claimant further testified, and his documentation supports, that his injury is aggravated by some of his job tasks, such as pushing/pulling carts and lifting pots and pans. Claimant has been restricted from engaging in these activities by his doctor, but is able to perform his other job functions. Claimant has established, for the purposes of unemployment insurance benefits only, that his injury is work-related. Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work with restrictions the claimant has established ability to work. The employer was initially willing and able to accommodate claimant's restrictions. However, once its doctor concluded the injury was not work-related the employer determined it would no longer accommodate claimant. The employer testified had their doctor reached the alternative conclusion they would have continued to accommodate claimant. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated June 6, 2017, (reference 01) is reversed. The claimant is able to work and available for work effective May 14, 2017. Benefits are allowed, provided he is otherwise eligible.

REMAND:

Information was provided during the hearing indicating claimant had since been separated from employment. This issue regarding claimant's separation is therefore remanded to the Iowa Workforce Development Benefits Bureau for an initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn