

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THOMAS L SCOTT
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 15A-UI-01959-LT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/30/14
Claimant: Appellant (4)

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 February 4, 2015 (reference 04) unemployment insurance decision that denied benefits based upon not being able to or available for work effective January 11, 2015. The parties were properly notified about the hearing. A telephone hearing was held on March 13, 2015. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibit A was received.

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 medically unable to work from January 7, 2015 through February 11, 2015. He works weekends as work is available. He was released to work without restriction effective February 12, 2015 (Claimant's Exhibit A).

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 effective the week ending February 14, 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.

Inasmuch as the treating physician has released the claimant to return to work, he has established his ability to work effective the week ending February 14, 2015.

DECISION:

The February 4, 2015 (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective the week ending February 14, 2015. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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