

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES A MORGAN
Claimant

ROLAND WILBERT VAULT COMPANY INC
Employer

APPEAL 17A-UI-10383-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/17/17
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 3, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2017. The claimant participated personally and was represented by Gary B. Nelson, attorney at law. The employer participated through Jeff Roland. The employer made a statement it would not contest benefits for Mr. Morgan and did not otherwise participate. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective September 17, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last employed full-time as a laborer for this employer until he separated on May 4, 2017. The claimant has permanent medical restrictions as result of a lower back injury consisting of limited bending, taking frequent breaks, and no lifting over 35 to 40 pounds. The claimant's employment history includes welding, mowing, being a bus boy, and roofer. He has applied primarily for positions, in which he has no work experience or cannot meet the physical requirements due to his medical restrictions. For example, last week he applied as a cook at Culvers, and as a Fed Ex delivery driver. The claimant does not meet the qualifications for the positions currently or have experience in either capacity, but stated he hoped by making contact with employers, he may be able to discuss modifying a position or finding a different position that he would be able to perform within the company.

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

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(2) 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.

(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. 871-24.22(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 Code section 96.4(3) (2017) provides: An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds: The individual is able to work, is available for work, and is earnestly and actively seeking work. 871 IAC 24.22 expounds on this:

871—24.22 Benefit 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 burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Admin. Code r. 871-24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). 24.22(1)

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. *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). 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.

The limitation of the ability to work is the same for work related or non- work related conditions. Turning to the limitations themselves the administrative law judge concludes that they are not so restrictive that the Claimant would not be able to perform any work. However, they are restrictive for which the claimant, given his proven experience, abilities, and training, is not able to perform the types of jobs he is applying for, given his restrictions. The claimant indicated he is applying for jobs such as a cook, for which he has no experience, and acknowledges he would have to bend over, in order to do, or alternately, positions such as Fed Ex delivery driver, in which the claimant would reasonably expect to bend over and lift packages, which would violate his physical restrictions. The claimant acknowledged that he is applying for positions that do not meet his restrictions, in hopes that the employer may be able to find or offer him a position through the contact that he will be able to physically perform.

The administrative law judge is sympathetic to the claimant and recognizes his efforts, but based on the evidence, concludes the claimant has not established he is applying for jobs that he is able to accept, given his medical restrictions. Therefore, benefits are denied until the claimant establishes that he is applying for positions, that he is qualified for, and can physically perform, given his medical restrictions. Benefits are denied.

DECISION:

The October 3, 2017, (reference 02) decision is affirmed. The claimant is not able to work and available for work effective September 17, 2017. Benefits are denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn