

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAWRENCE J CARLSON
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL 17A-UI-10273-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/30/17
Claimant: Respondent (1)

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 employer filed an appeal from the September 29, 2017 (reference 04) unemployment insurance decision that allowed benefits based upon a determination that claimant was able to work and available for work effective July 30, 2017. The parties were properly notified of the hearing. A telephone hearing was held on October 24, 2017. The claimant, Lawrence J. Carlson, participated and was represented by Chandler M. Surrency, Attorney at Law. The employer, Van Diest Supply Company, participated through Carolyn Cross, Personnel Manager; and Lee Trask, Vice President of Manufacturing; and was represented by Espnola Cartmill, Attorney at Law. Claimant's Exhibit A and Employer's Exhibits 1 through 3 were received and admitted into the record without objection.

ISSUE:

Is the claimant able to work and available for work effective July 30, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a bulk terminal shipping and receiving team leader, with this employer until July 30, 2017, when he was discharged due to an inability to perform his job. Claimant sustained an eye injury which rendered him unable to perform his job duties. Claimant provided a copy of a letter from Dr. David D. Saggau stating that he is able to work with certain restrictions. (Exhibit A) Claimant is now blind in one eye. His job duties required him to operate forklifts and climb up on rail cars. Due to claimant's injury, he is now permanently restricted from heights, running most power tools, and operating heavy equipment. All of claimant's work history involves operating heavy equipment.

Claimant is currently looking for work and bolstering his employability. Claimant is taking classes with Iowa Workforce Development, and he is considering returning to school. Claimant has taken some accounting classes, and he is looking into jobs in accounting. Additionally, claimant has applied for a job as a rental assistant, a fire extinguisher repairperson, a quarry

employee, a flooring store employee, and a countertop and cabinet installer. Claimant believes all of these jobs fit within his restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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. 871-24.22(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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant is no longer able to work in the field where his employment experience lies. Nevertheless, claimant is actively searching for work that fit his restrictions. He has applied for numerous jobs that do not require schooling or specialized training, and they appear to fit the restrictions ordered by his doctor. Accordingly, benefits are allowed.

DECISION:

The September 29, 2017 (reference 04) unemployment insurance decision is affirmed. Claimant is able to work, available for work, and actively and earnestly seeking work. Benefits are allowed, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn