

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD M KLINE
Claimant

VTI ARCHITECTURAL PRODUCTS INC
Employer

APPEAL 20A-UI-09192-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/29/20
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2020 (reference 04) unemployment insurance decision that denied benefits to the claimant effective May 17, 2020 because he was not able to and available for work due to injury. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2020. Claimant participated personally. Attorney Eric Loney represented the claimant. The employer, VTI Architectural Products Inc., participated through witness Jordan Radke. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal Nos. 20A-UI-09189-DB-T; 20A-UI-09191-DB-T; and 20A-UI-09730-DB-T.

ISSUE:

Was the claimant able to and available for work effective May 17, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on August 22, 2011. His most recent job title for which he performed services was Lead in the Finish Room. Claimant worked full-time. His direct supervisor was Steve Wilcox.

Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020. The claimant was working full-time from March 29, 2020 through April 4, 2020. From April 5, 2020 through May 2, 2020, the claimant was on an approved, unpaid, leave of absence due to lack of childcare for his minor children because of the COVID 19 pandemic. Claimant returned to work full-time during the benefit-week beginning May 3, 2020 until he permanently separated from employment on or about May 21, 2020.

However, claimant was off of work on Monday, May 11, 2020 and used his Paid Time Off (PTO) to cover his leave from work. Claimant was off of work on Tuesday, May 12, 2020 in order to be tested for COVID 19 prior to a scheduled surgery. Claimant was off of work on Wednesday, May 13, 2020 through Friday, May 15, 2020 due to surgery and recovery for a work-related injury. Upon completion of the surgery he was prescribed medication for pain. The employer's

nurse, whom the claimant had consulted with in the past regarding his worker's compensation injury, informed him on Sunday, May 17, 2020 that if it was necessary for him to take the prescribed pain medication during the day that he would not be allowed to work. This was because the pain medication was a narcotic.

Claimant informed the nurse on Sunday, May 17, 2020 that he needed to take the prescribed pain medication due to the amount of pain he was in. Claimant did not work Monday, May 18, 2020 due his recovery from surgery which included use of pain medication. Claimant did not work Tuesday, May 19, 2020 due his recovery from surgery which included use of pain medication. Claimant did not work Wednesday, May 20, 2020 due his recovery from surgery which included use of pain medication. Claimant did not work Thursday, May 21, 2020 due his recovery from surgery which included use of pain medication.

Claimant had communicated with his supervisor, Steve Wilcox, on or about Wednesday, May 20, 2020 that he was still unable to work because he was recovering from surgery and taking the prescribed pain medication as directed. Claimant communicated this to his supervisor via text message.

Claimant then received a letter in the mail stating that his employment with the company had ended due to three no call no shows; which was in violation of the employer's written policy. Claimant was aware of the three day no call no show policy; however, the claimant believed that because he was instructed by the nurse not to work that it was unnecessary for him to report his absences each day to his supervisor. Upon receipt of a notice stating that he was terminated from employment, the claimant contacted the employer and spoke to Eric Sunsong about his position. Mr. Sunsong told him that he should have been in contact with human resources and he should file for unemployment.

The employer had notice that the claimant had been prescribed a narcotic as pain medication for the one-week period of May 18, 2020 through May 22, 2020. Claimant had no verbal or written discipline during the course of his employment with the employer prior to his separation from employment. Claimant has been able to and available for full-time work effective May 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

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", subparagraph (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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) provides:

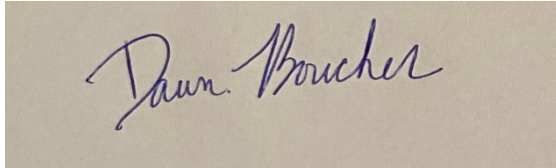
Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available 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.

Claimant was off of work due to his recovery from surgery from May 17, 2020 through May 23, 2020. As such, benefits are denied effective May 17, 2020 through May 23, 2020 as he was not able to and available for work. Claimant has been able to and available for full-time work effective May 24, 2020. Benefits are allowed effective May 24, 2020, provided the claimant is otherwise eligible.

DECISION:

The August 3, 2020 (reference 04) unemployment insurance decision that denied benefits effective May 17, 2020 due to injury is modified in favor of the claimant. Benefits are denied May 17, 2020 through May 23, 2020 due to the claimant being unable to work due to injury. The claimant has established that he is able to and available for work pursuant to Iowa Code § 96.4(3) effective May 24, 2020. Benefits are allowed effective May 24, 2020, provided the claimant remains otherwise eligible.

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Dawn Boucher
Administrative Law Judge

September 22, 2020
Decision Dated and Mailed

db/scn