

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL IVY
Claimant

MIDWEST JANITORIAL SERVICE INC
Employer

APPEAL 21A-UI-13212-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Ivy., the claimant/appellant, filed an appeal from the May 26, 2021, (reference 02) unemployment insurance decision that denied benefits as of March 14, 2021. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2021. Mr. Ivy participated and testified. The employer participated through Erin Decker, director of administration. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1

ISSUES:

Is Mr. Ivy able to and available for work effective March 4, 2021?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Ivy began working for the employer on October 21, 2020. He worked as a part-time custodian. His work location was Midwest Bank in Iowa City. Mr. Ivy self-describes as disabled. He is not able to bend, lift or stand for long periods of time. The employer accommodated Mr. Ivy such by assigning him to Midwest Bank.

On November 30, 2020, Mr. Ivy was injured at Walmart. He was not at work. Mr. Ivy's doctor advised that he not attend work. Mr. Ivy attended physical therapy with a physical therapist. Mr. Ivy told the employer and began unpaid medical leave. The employer asked Mr. Ivy to provide monthly updates on his availability.

In December 2020 or January 2021, Mr. Ivy's doctor released him to return to work but his physical therapist did not release him to return to work. In February 2021, Mr. Ivy told the employer that his physical therapist still had not released him to return to work. In April 2021, the employer reached out to Mr. Ivy about his availability since he had not reported since February 2021. The employer was not able to reach Mr. Ivy. Mr. Ivy has not reported his availability to the employer since February 2021.

Mr. Ivy testified that his physical therapist had released him to return to work but he did not know when the physical therapist released him to return to work. Mr. Ivy did not tell the employer this information and he has not returned to work. As of the hearing date, the employer still has Mr. Ivy in medical leave status. The employer has work available for Mr. Ivy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Mr. Ivy is not able to and available for work effective March 14, 2021.

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", 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 provides, in relevant part:

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.

(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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Mr. Ivy was not working, on advice of his doctor, due to his non-work injury. Mr. Ivy's doctor released him to return to work in December 2020 or January 2021 and his physical therapist released him to return to work at some point after February 2021. Mr. Ivy was unable to provide the date or an estimate of the date when his physical therapist released him to return to work. Mr. Ivy did not tell the employer when his physical therapist released him to return to work so he is still on a leave of absence. Mr. Ivy has not established that he able to and available for work. Accordingly, he is not eligible for regular unemployment insurance benefits. Benefits are denied.

DECISION:

The May 26, 2021, (reference 02) unemployment insurance decision is affirmed. Mr. Ivy is not able to and available for work effective March 14, 2021. Benefits are denied.



Daniel Zeno
Administrative Law Judge
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August 13, 2021
Decision Dated and Mailed

dz/scn