

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN W JANOSKY
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 23A-UI-11602-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/26/23
Claimant: Appellant (1-R)

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, John W. Janosky, filed an appeal from the December 7, 2023, (reference 04) unemployment insurance decision that denied benefits effective November 19, 2023, based upon the conclusion he was too injured to work. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2024, at 1:00 p.m. The claimant participated. The claimant was represented by Dennis Mahr, attorney-at-law. The employer participated through Human Resources Manager Vikky Christensen and two human resources supervisors, Sandra Munoz, and Mary Hammer.

ISSUE:

Whether the claimant was able and available for the week ending November 19, 2023?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked in a full-time role for the employer in a variety of roles from February 7, 2022, until he separated from employment on November 15, 2023. He performed general laborer roles for this employer aligned with a shipping bay like using a forklift and loading trucks. In previous jobs, the claimant painted and stained as well.

On August 15, 2022, the claimant injured his back while performing his duties.

The claimant filed a worker's compensation claim.

On May 11, 2023, the last treating physician the claimant had with the worker's compensation claim restricted his ability to frequently lift things with his legs weighing more than 20 pounds and lifting things over his shoulders more than 30 pounds. He could occasionally carry up to 40 pounds with the right posture. He was further restricted from frequently climbing ladders, squatting, kneeling, bending, sitting, walking, stair climbing, and overhead reaching. The claimant provided a copy of these final restrictions. (Exhibit 5) The physician also found the

claimant had reached maximum medical improvement. The report notes this suggests that the condition is stable such that no further recovery or deterioration is anticipated, but there may be some change.

On June 14, 2023, the employer acknowledged these restrictions and assigned him light duty work. (Exhibit 6)

On November 15, 2023, the employer terminated the claimant. It reasoned that it had violated its attendance policy.

As of the time of the hearing, the claimant's condition has not changed. The claimant has to use muscle relaxers to manage his pain during the day. He cannot perform the type of work he has done during his career. For instance, the claimant cannot drive a forklift because it lacks suspension, which hurts his back. He cannot paint or stain because this would require too much bending and twisting.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not able to work and available for work effective November 15, 2023. Benefits are denied.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) 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. 871-24.23(1) provides:

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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Since the claimant separated from the employer, the claimant's ability to work is assessed broadly to include a variety of suitable roles regardless of whether the employer provided them or not.

In this case, the record shows the claimant is not able to work due to his injury. The record shows the claimant acknowledged that duties he performed earlier in his career are daunting given his restrictions. In direct examination, the claimant offered that he could drive for an occupation, given his restrictions. But he also acknowledged his sitting restrictions would limit the length of time he could perform this primary function. The administrative law judge also notes that driving roles would be ill suited for someone who has to take muscle relaxers for pain management.

The other potential job that was offered was that of an usher at a local theater. The administrative law judge finds this hypothetical shows how limited the claimant is by his injury. This is not a highly demanded occupation. It is likely less demanded than it used to be. These hypotheticals are also not comparable to the employment he left in that they would not provide the salary or the stability of the employment he left.

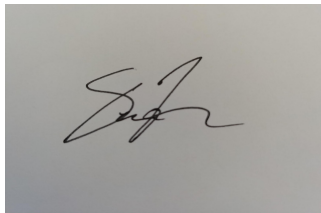
It is the claimant's burden to show he was able and available and the record shows he did not meet it. Accordingly, benefits are denied.

DECISION:

The December 7, 2023, (reference 04) unemployment insurance decision is AFFIRMED. The claimant was not able to work and available for work effective November 19, 2023. Benefits are denied.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the claimant's separation from this employer on November 15, 2023 is disqualifying with due process rights given to both parties, if it deems such appropriate for further processing.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II

January 9, 2024
Decision Dated and Mailed

SMN/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.