

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY B JOHANNES
Claimant

DICK'S SPORTING GOODS INC
Employer

APPEAL 17A-UI-13431-CL-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/26/17
Claimant: Appellant (2)

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 filed an appeal from the December 22, 2017, (reference 03) unemployment insurance decision that denied benefits based upon claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on January 22, 2018. Claimant participated personally and was represented by attorney Richard Schmidt. Employer did not register for the hearing and did not participate.

ISSUE:

Is the claimant able to work and available for work effective November 26, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant suffered work injuries while performing freight work for employer in November 2015. Claimant underwent knee surgery in January 2016 and hip surgery in December 2016. Claimant has been released from care by the doctors performing the surgeries. Claimant has reached maximum medical improvement and has permanent restrictions that prohibit him from lifting more than 25 pounds from the floor, repeatedly bending and squatting, and standing or sitting for prolonged periods.

Claimant was able to perform the computer part of his job duties until employer let him go in November 2017.

Claimant has five years of experience in the banking industry. Claimant is applying for banking positions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective November 26, 2017.

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(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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

In this case, claimant was separated from his employment performing freight work. Although he is not able to return to that line of work due to permanent restrictions, he is able to perform work in the banking industry with reasonable accommodations. Claimant has experience in that line of work and is submitting job applications in that line of work.

Claimant has established that he is able to work for purposes of the employment security law.

DECISION:

The December 22, 2017, (reference 03) unemployment insurance decision is reversed. The claimant is able to work and available for work effective November 26, 2017. Benefits are allowed, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn