

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACK LLOYD
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 19A-UI-01137-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/19
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 6, 2019, (reference 04) that held claimant was not able to and available for work. After due notice, a hearing was scheduled for and held on February 25, 2019. Claimant participated personally. Employer participated by Julie Coughlin, Branch Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for employer on March 19, 2018. Claimant was assigned to work at General Mills in Cedar Rapids, Iowa. The plant shut down in late December, 2018 and claimant filed for unemployment benefits. Claimant tried to return to work at General Mills after the shut down, but he was told that he had exceeded the temporary employee 1300 hour rule, and he could no longer work for General Mills.

Claimant contacted employer and told it was happening. Employer confirmed with claimant that he could no longer work at General Mills. Claimant has been checking in for work pursuant to employer's rules each week, and he is available for full-time work once an opening becomes available.

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 January 6, 2019.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant is seeking work, and he is available for work. He checks in with his employer each week, and he is applying for full-time work. Benefits shall be allowed effective January 6, 2019.

DECISION:

The decision of the representative dated February 6, 2019, (reference 04) is reversed. Claimant is eligible to receive unemployment insurance benefits, effective January 6, 2019, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/rvs