

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DAVID A MCMURRAY**

Claimant

**APPEAL 14A-UI-13212-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCHER-DANIELS-MIDLAND CO**

Employer

**OC: 11/23/14**

**Claimant: Appellant (1)**

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

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 11, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2015. Claimant participated and was represented by Anthony Olson, Attorney at Law. Employer participated through plant manager Dean Petroff and safety director Lonnie Jacobson.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Was claimant on a leave of absence that would make him ineligible for benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as a painting and blasting worker at ADM Railcar (not the main plant) and was separated from employment on November 17, 2014, when he was placed on a medical leave of absence until he is released to return to full work duties without restriction. No other work was available but he was told he could apply for work at the main plant. He was unable to sandblast because of a work-related medical condition diagnosed as crps complex regional pain syndrome. The company doctor, Broughammer, has issued claimant a permanent restriction against sandblasting or painting duties. The claimant has a pending contested case before the Iowa Workers' Compensation Commissioner. He is currently receiving short-term disability, which expires after a year. He was not offered a job at the main plant and has not applied for one. The employer is not able to accommodate claimant in his original job. Claimant's personal physician from Iowa City is said to have called the medical condition work-related but the claimant has not provided the medical opinion in writing.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective November 23, 2014.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Inasmuch as the claimant has not established that the medical condition is work-related, as is his burden, and the treating physician has not released the claimant to return to work without restriction, he has not established his ability to work while still an employee of ADM effective November 23, 2014. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since he has not been released to perform his full work duties, he is not considered able to or available for work.

**DECISION:**

The December 11, 2014, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 23, 2014. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers his services to the employer, and no suitable, comparable work is available; or if he is involuntarily separated before that time.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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