

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORY J SEMPRINI
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL NO. 20A-UI-01442-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/19
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Cory Semprini filed a timely appeal from the February 10, 2020, reference 16, decision that denied benefits effective January 26, 2020, based on the deputy's conclusion that Mr. Semprini was unable to work due to injury. After due notice was issued, a hearing commenced on March 5, 2020 and concluded on March 6, 2020. Mr. Semprini participated. Kayla Jones represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency's administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant has been able to work and available for work within the meaning of the law since January 26, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cory Semprini established an original claim for benefits that was effective August 18, 2019 and received benefits through the benefit week that ended January 25, 2020. On January 6, 2020, Mr. Semprini contacted Remedy Intelligent Staffing, Inc. for assistance in securing work. Remedy is a temporary employment agency. Mr. Semprini had not previously worked for Remedy. On January 6, 2020, Remedy had Mr. Semprini sign a "Conditional Offer of Employment." The document was not an actual offer of employment, but was instead an acknowledgement of Remedy's policies in exchange for Remedy's agreement to consider Mr. Semprini for placement in temporary work assignments.

On January 14, 2020, Remedy offered Mr. Semprini a full-time temporary work assignment at the Pitney Bowes mailroom in Urbandale. Mr. Semprini has at all relevant times resided in Altoona. At the time the employer made the offer of employment, the employer shared with Mr. Semprini that the assignment would pay \$13,00 per hour and that the assignment work hours would be 4:30 a.m. to 12:30 p.m., Monday through Saturday. The employer also shared

that the start date would be January 28, 2020, which was a Tuesday. Mr. Semprini accepted the assignment during the contact on January 14, 2020. At the time Mr. Semprini accepted the assignment, he was in the 22nd week of his unemployment insurance claim. The assignment Mr. Semprini accepted would pay \$520.00 per week. Mr. Semprini's average wage during his highest earning base period quarter had been \$326.99.

On Monday, January 27, 2020, Mr. Semprini contacted Remedy and advised that he would be unable to report for the January 28, 2020 assignment at Pitney Bowes. Mr. Semprini told Remedy that he had slipped on ice, had broken his leg, would be undergoing surgery on January 28, 2020, and would need time to recover. Mr. Semprini advises that he suffers from severe diabetes, that his toe turned black, that he had to have his toe amputated during the week of February 16-22, 2020, and that he was hospitalized for four days in connection with the amputation of his toe. Mr. Semprini advises that he takes methadone daily for pain and takes oxycodone every three days for pain. Though Mr. Semprini asserts his doctor has said he can work, Mr. Semprini does not have a medical release from his doctor.

At the time of the appeal hearing, Mr. Semprini did not have a work search log, which he asserted was in his mother's vehicle. Mr. Semprini could not name any employer contacts for the weeks that ended February 1, February 15, February 22, or February 29, 2020. Mr. Semprini could name only one employer contact for the week that ended February 8, 2020. That one contact was for a manufacturer of vehicle running boards.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides, in relevant part, as follows:

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.

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. 871-24.22(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. 871-24.23(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.

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 medical practitioner and has not been released as being able to work.

Mr. Semprini has not been able to work or available for work within the meaning of the law since the benefit week that began January 26, 2020. Since that time, Mr. Semprini had been dealing a serious medical issue that prevents him from being able to work or available for work. Mr. Semprini injured his leg, underwent diabetes-related amputation of his toe, and continues on a regimen of narcotic (opiate) pain medication. Any work search, if there was any, was neither an active nor earnest search for work. Mr. Semprini is ineligible for benefits for the period beginning January 26, 2020. The able and available disqualification continued at the time at the appeal hearing and will continue until Mr. Semprini demonstrates through competent medical evidence that he has been released to perform work and is in fact able to perform work. Mr. Semprini must also demonstrate an active and earnest search for new employment. Mr. Semprini must meet all other eligibility requirements.

DECISION:

The February 10, 2020, reference 16, decision is affirmed. The claimant has not been able to work or available for work since January 26, 2020. Benefits are denied effective January 26, 2020. The able and available disqualification continued at the time at the appeal hearing and will continue until the claimant demonstrates through competent medical evidence that he has been released to perform work and is in fact able to perform work. The claimant must also demonstrate an active and earnest search for new employment. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs