

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE W PALMER
Claimant

POTTHOFF FOODS CO INC
Employer

APPEAL 18A-UI-10975-CL

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/14/18
Claimant: Appellant (2R)**

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 November 1, 2018, (reference 01) unemployment insurance decision that denied benefits based upon claimant's ability to work. The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa, on November 30, 2018. Claimant participated. Employer participated through president Barry Spain. Employer's Exhibit 1 was received. Claimant's Exhibits A through D were received.

ISSUE:

Is the claimant able to work and available for work effective October 14, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2014, as a full-time driver. Claimant injured his shoulder at work in April 2018. Claimant filed a claim with employer's workers' compensation insurance carrier. The carrier paid for claimant's medical treatment. In August 2018, claimant underwent surgery on his shoulder. Claimant was then off work for the next six to seven weeks. Claimant received a weekly workers' compensation benefit during this time period.

On October 1, 2018, a medical provider released claimant to return to work with restrictions of lifting no more than three to five pounds and no climbing in and out of a trailer. Employer offered to accommodate claimant by providing a driver to ride with him. This accommodation did not work out due to personal characteristics of the driver offered by employer.

Claimant considers himself separated from employment effective October 8, 2018. The Benefits Bureau of Iowa Workforce Development has not issued an initial decision on whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits.

Claimant filed a claim for unemployment insurance benefits with an effective date of October 14, 2018.

Claimant still has the same work restrictions in place. A different employer hired claimant as a truck driver at the end of October 2018 and claimant commenced employment. The new employer is providing claimant work that accommodates his restrictions.

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.

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. 871-24.23(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.

Since the employment ended on October 8, 2018, and claimant did not file his claim for unemployment insurance benefits until October 14, 2018, the issue is not whether claimant is able to or available to work for employer in particular, but whether he is able to and available for work in general.

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. 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.*

In this case, claimant has been released to return to work with restrictions. Claimant has established he is able to work with a reasonable accommodation, as he obtained such employment only two weeks after filing this claim for unemployment insurance benefits.

Claimant has established his ability to work. However, the issue regarding whether claimant's separation from employment disqualifies him from receiving benefits remains. That issue will be remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The November 1, 2018, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective October 14, 2018. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn