

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICTOR MUJO
Claimant

GLOBAL FOODS PROCESSING INC
Employer

APPEAL 17A-UI-11691-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/17
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 November 9, 2017, (reference 01) unemployment insurance decision that found him ineligible for benefits based on his inability to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on December 5, 2017. The claimant participated and was represented by attorney Stan McElderry. The employer participated through attorney Sarah Kleber and witness Dolores Guest. Claimant's Exhibits A and B and employer's Exhibits 1 through 6 were received into evidence.

ISSUE:

Is the claimant able to work and available for work effective October 22, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as an employee equipment supervisor. Claimant began working for the employer on January 11, 1995 and had been on medical leave due to shoulder injury since October 23, 2017.

On August 29, 2017, claimant was working on the line pulling meat with a hook with his left hand and arm. While pulling, claimant heard a noise in his left shoulder and immediately began experiencing pain. Claimant reported his injury to his immediate supervisor right away and was advised by the employer to rest his shoulder, which he did. Claimant continued to experience and report pain in his shoulder and was eventually sent by the employer to see a doctor. Claimant testified he had no issues with his shoulder prior to August 29. On September 22, 2017, claimant's doctor, Dr. Meis, released claimant to return to work with the sole restriction that he could not work on the line. (Exhibit 1). Claimant's regular job duties required him to fill in on the line on an as needed basis. Claimant testified he only worked on the line on occasion. Guest initially testified she was not sure how often claimant was required to fill in on the line, but later testified she estimated it to be around 30 hours per week. Guest went on to testify claimant would perform his normal supervisory duties for approximately 20 hours per week.

Following the receipt of Dr. Meis' restrictions the employer was able to accommodate claimant's injury by having him perform his normal supervisory job duties outside of work on the line, as well as other job duties within his restriction. On October 23, 2017, the employer learned from its worker's compensation insurance carrier that it had determined claimant's injury was not work related. Once it received this information the employer determined it would no longer accommodate claimant and he would be placed on medical leave until he could return without restriction. (Exhibits 5 and 6). Neither party has received a medical opinion as to whether claimant's injury was work related.

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 October 22, 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. 871-24.23(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.

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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that “[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits.” *White v. Emp’t Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep’t of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Iowa Code section 216.6 (previously 601A.6) requires employers to make “reasonable accommodations” for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee’s needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp’t Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm’n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm’n*, 401 N.W.2d 192 (Iowa 1987). Some employees with restrictions will be considered disabled and thus protected by the Iowa Civil Rights Act and the American’s with Disabilities Act. Although disabled these employees may still be “able and available” if reasonable accommodation by employers would make them so. *Sierra v. Emp’t Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993).

Claimant has provided credible testimony that he had no issues with his left shoulder until August 29 when he heard a noise and began experiencing immediate pain while performing work. Other than a blanket determination by its insurance carrier that claimant’s injury was not work related, the employer has not provided any information, medical or otherwise, to refute claimant’s testimony. The testimony therefore indicates claimant’s injury was work-related for the purposes of unemployment insurance benefits. Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The representative’s decision dated November 9, 2017, (reference 01) is reversed. The claimant is able to work and available for work effective October 22, 2017. Benefits are allowed, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs