

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS J VERONDA
Claimant

DONS TRUCK SALES INC
Employer

APPEAL 21A-UI-23948-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/19/21
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer, Don's Truck Sales, Inc., filed an appeal from the October 22, 2021, (reference 04) unemployment insurance decision that allowed benefits based upon the determination that claimant was medically able to and available for work effective September 19, 2021. The parties were properly notified of the hearing. A telephone hearing was held on January 6, 2022, and was consolidated with the hearing for appeal number 21A-UI-23949-AR-T. The claimant, Travis J. Veronda, participated personally. The employer participated through Gene Carpenter. The administrative law judge took official notice of the administrative record.

ISSUE:

Is claimant able to and available for work effective September 19, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a service manager from September 7, 2021, until this employment ended on September 15, 2021, when he was discharged.

On September 13, 2021, claimant texted Carpenter, his supervisor, prior to the start of the shift to inform Carpenter that he had injured his shoulder over the weekend and needed to see the doctor. Carpenter asked claimant to return to work as soon as possible, and reassured him that his duties would include things he could do with one arm. Claimant did not see the doctor that day until late in the day.

On September 14, 2021, claimant again texted Carpenter prior to the start of the shift to tell him that his shoulder was not better and he would not be in to work that day. Later in the day, he informed Carpenter that, in addition to the shoulder issue, claimant's debit card had been compromised and it would take time for the bank to issue a new card and reimburse claimant for the money lost. He said he did not have money to get gas to get to work, but would try to make arrangements to get to work.

On September 15, 2021, claimant texted Carpenter to tell him that he could not come to work because he needed to see the doctor about his shoulder again. Carpenter terminated claimant's employment via text later that morning because claimant had not been able to come to work reliably.

Claimant estimated that he was able to drive again after his injury within a week. His ability to drive was the primary limitation of the injury. His transportation issues also resolved within a short period after his discharge. He was able to return to work similar to his work with this employer after approximately a week.

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 September 19, 2021.

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. The court in *Gilmore v. Emp't 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)).

Since the employment ended on September 15, 2021, claimant is no longer obligated to return to employer upon his medical release to offer his services. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Claimant testified that he was able to return to work performing similar duties as those he performed with this employer—those duties were primarily sedentary and administrative. Since he is able to perform less strenuous jobs than he held in his work history, he is considered able to work.

DECISION:

The October 22, 2021 (reference 04) unemployment insurance decision is affirmed. The claimant is able to work and available for work effective September 19, 2021. Benefits are allowed, provided he is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

January 31st, 2022
Decision Dated and Mailed

ar/rs