

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW PEARSON
Claimant

DUTCH BAKERY LLC
Employer

APPEAL 16A-UI-10685-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/04/16
Claimant: Appellant (1)

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. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 21, 2016, (reference 02) unemployment insurance which held the claimant not able and available for work. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2016. The claimant participated personally. Sandra Pearson, mother of the claimant, testified. Leslie Pearson, sister of the claimant attended as an observer only. The employer participated through Kathleen Mulder, owner/member. Department exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective September 4, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last employed full-time in the kitchen and performing delivery services for the employer, Dutch Bakery LLC. The claimant filed his unemployment insurance claim effective September 4, 2016, in response to separation from the employer.

At the time the claimant filed his claim, his physician had issued a 10 pound lifting restriction and directive not to bend or twist in the performance of any job. The claimant is currently undergoing medical treatment and physical therapy related to a back strain. The restriction was modified to include a 20 pound lifting restriction and the claimant expects to continue with physical therapy for the next three to five weeks.

The claimant has been applying for work at Hy-Vee, Casey's and other employers, for work consistent with donut preparation, or stocking shelves. The claimant has been informed by

employers that he will not be hired until his restrictions are lifted. The claimant's own treating physician told the claimant he was unaware of what kind of jobs the claimant would be able to currently do given this restrictions. The claimant continues to search for work each week and wants to be working at this time. The claimant has reliable transportation and has no other restrictions to his employability beyond the medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not currently able to work and available for work effective September 4, 2016.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

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.

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.

The undisputed evidence is that the claimant is currently under medical care related to a back strain. He is undergoing physical therapy and since he filed his claim, he has been unable to perform job duties that include any bending or twisting, and not lifting more than 10 to 20 pounds. Consequently, the claimant's job options are difficult, as the claimant acknowledged his doctor was unaware of jobs he could perform that would meet his restrictions. The administrative law judge is sympathetic to the claimant's situation, and recognizes his desire to be reemployed as soon as possible. The claimant may be able to and available for work upon his release without restrictions or restrictions that would allow him to perform some work, even if it was not the same as his prior job. However, at this time due to the extent of his physician

issued restrictions, the claimant does not meet the requirements of being able to and available for work under Iowa law. Benefits are denied.

DECISION:

The decision of the representative dated September 21, 2016 (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he is not able to and available to perform work at this time.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs