

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
SCOTT R BUSS Claimant	APPEAL NO. 13A-UI-09824-S2T
IOWA WORKFORCE DEVELOPMENT DEPARTMENT	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 07/21/13 Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Scott Buss (claimant) appealed a representative's August 22, 2013, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was not willing to work in his usual occupation. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on September 19, 2013. The claimant was represented by Benjamin Roth, Attorney at Law, and participated personally. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant suffered a work-related injury on April 11, 2011. On July 1, 2013, the claimant was released to return to work with restrictions. The employer did not have work for the claimant. The claimant could not perform his usual job, specialized diesel technician, because of the weight restriction. He could perform the work of a lighter load mechanic or supervise other mechanics.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is available for work.

871 IAC 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.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work with restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

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".

871 IAC 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.

The claimant is restricted from lifting over 30 pounds. Other than this restriction the claimant can perform work in a number of positions which do not require lifting over 30 pounds. The claimant has met his burden of proof to show that he has the ability to work.

DECISION:

The representative's August 22, 2013, decision (reference 03) is reversed. The claimant is not disqualified from receiving unemployment insurance benefits because he is able and available to work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css