

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES GIRARD
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 23A-UI-09479-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/23
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

On October 6, 2023, claimant James Girard filed an appeal from the September 26, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant requested and was granted a leave of absence from work. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Monday, October 23, 2023. Claimant James Girard personally participated. Employer Wells Enterprises Inc. did not appear and did not participate. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work effective August 20, 2023?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed at Wells Enterprises Inc. He was off work for a period of time due to a work-related shoulder injury. Claimant had surgery on his shoulder on August 1, 2023.

The morning of August 17, Jennifer (the employee in charge of worker's compensation at Wells Enterprises) contacted claimant and told him that his "two weeks were up" and he had to return to work immediately. Claimant reported back to work that night and worked a full shift. He spoke with a man in HR, who said he knew claimant would be returning (per Jennifer). The man in HR told claimant's supervisor that claimant was returning to full-time hours.

The following week, claimant looked at the schedule and he was not scheduled for any hours. He opened a claim for unemployment insurance ("UI") benefits that week, effective August 20, 2023, because the employer had no work for him that week. Claimant reported receiving no insured wages that week, and he received his full benefit amount of \$582.00.

Claimant was scheduled for his regular full-time hours the following two weeks. Claimant continued to file for benefits those two weeks, the week ending September 2 and the week ending September 9. He reported his gross wages, which were in excess of his weekly benefit

amount plus \$15.00. Because of the amount of gross wages he received, claimant did not receive any UI benefits either of those two weeks.

Claimant worked a partial week during the week ending September 16. He called in and reported an "FMLA" absence due to arm pain on one of his scheduled workdays. Claimant did not have any PTO left, so he did not receive any pay for the day he did not work. Claimant filed a claim for UI benefits for the week ending September 16, 2023. He reported earning \$560.00 in gross benefits. Because he reported less than his weekly benefit amount plus fifteen dollars in insured wages that week, claimant received partial benefits of \$167.00. A payment of \$141.95 was issued to claimant's IWD debit card on September 19, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work effective August 20, 2023, for the week ending August 26, 2023. He was not available for work for the week ending September 16, 2023.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1), (23), and (34) provide:

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.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(34) Where the claimant is not able to work due to personal injury.


For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Here, claimant credibly testified that he returned to work on August 17, 2023 per the employer's instructions. He was prepared to work his full-time schedule to the best of his ability, but the employer did not put him on the schedule. Claimant then worked two full work weeks – the weeks ending September 2 and September 9 – without any issue, demonstrating his physical ability to work. Accordingly, claimant has met his burden of proving his ability to work and availability for work and benefits are allowed.

For the week ending September 16, claimant worked a partial week due to physical pain. Dividing claimant's reported wages -- \$560.00 – by his hourly rate of approximately \$28.00 per hour, claimant would have worked around twenty hours that week. Working twenty hours at claimant's full-time job would have removed him from the labor market, as this would have occurred over three shifts. Additionally, for the hours that claimant did not work, he was ill or injured and unable to work as a result. For both reasons, claimant was not available for work for the week ending September 16, 2023. Benefits for that week must be denied.

DECISION:

The September 26, 2023 (reference 01) unemployment insurance decision is modified in favor of claimant/appellant James Girard. Claimant was able to work and available for work effective August 20, 2023. Benefits are allowed effective August 20, 2023, provided he is otherwise eligible.

Claimant was not available for work for the week ending September 16, 2023, because claimant was both working to the extent that he was removed from the labor market and because he was not able to work due to illness/injury. Benefits for that week must be denied.



Elizabeth A. Johnson
Administrative Law Judge

October 24, 2023
Decision Dated and Mailed

LJ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.