

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ELVIS ALICAIC

Claimant

APPEAL NO: 18A-UI-11118-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 06/03/18

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Elvis Alicaic, the claimant filed a timely appeal from a representative's unemployment insurance decision dated November 9, 2018, (reference 02) which denied unemployment insurance benefits as of June 3, 2018, finding Mr. Alicaic not eligible to receive unemployment insurance benefits because he was not able to perform work due to illness. After due notice was given, a telephone hearing was held on November 30, 2018. Claimant participated. Official interpreter was language line interpreter number 10655 / Bosnian Language. Although duly notified, there was no participation by the employer.

ISSUE:

The issue is whether Elvis Alicaic is able and available for work within the meaning of the Iowa employment Security law, as of June 3, 2018.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Elvis Alicaic filed a claim for unemployment insurance benefits with an effective date of January 3, 2018. The claimant's most recent employer was Tyson Fresh Meats, Inc. Mr. Alicaic last reported for work with Tyson Fresh Meats, Inc. on December 13th, 2017. The next day, on December 14, 2017, Mr. Alicaic suffered a "stroke" and was hospitalized. Mr. Alicaic has been under a doctor's care since that time and determined by his doctor as unable to work.

Mr. Alicaic does not dispute that he is unable to work since he suffered a debilitating stroke on December 14, 2017, but he disagrees with the adjudicator's decision that denies unemployment insurance benefits as he needs the money to sustain his family. Mr. Alicaic had been truthful in fully informing Iowa Workforce Development of his medical condition. He was allowed benefits for a substantial period of time before he was later held to be ineligible because of his illness. Mr. Alicaic believes if he was not eligible for benefits, the error should not have occurred, or discovered sooner. In the alternative, Mr. Alicaic wants his benefits to continue because he has no income and cannot work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is able and available for work. It does not.

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.

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.

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

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 physician and has not been released as being able to work.

To satisfy the ableness requirement an individual must be physically and mentally able to work in some gainful employment, not necessarily the individual's customary occupation, but one which is engaged in by others as a means of livelihood. 871 IAC 24.22(1), with regard to illness or injury, each case decided on an individual basis, recognizing that various work opportunities present different physical requirements. 871 IAC 24.22(1)(a). A statement from a medical practitioner's considered to be prima face evidence of the physical ability of the individual to perform the work required. A statement from a medical practitioner is legally sufficient to establish claimant's physical ability unless disproved by other evidence. 871 IAC 24.22(1)(a).

To satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse. The individual must be genuinely attached to the labor market. A labor market means a market for the type of service which the individual offers in the geographic area in which the individual offers the service. It

means that the type of services that the individual's if offering is generally performed in the geographic area in which the individual is offering its services.

In the case at hand, the evidence establishes that Mr. Alicaic suffered a serious debilitating stroke on December 14, 2017, and that he has not been able to work since that date. Mr. Alicaic remains under a doctor's care and has not been released to work as of the time of the hearing in this matter.

Based upon the evidence in the record, the application and the appropriate law, the administrative law judge concludes that Mr. Alicaic has not been able to work in employment since opening his claim for unemployment benefits. Because he does not meet the able requirement of the law, he is ineligible for benefits.

Mr. Alicaic's dissatisfaction with the adjudicator's decision that denied unemployment insurance benefits is understandable. Although Mr. Alicaic had disclosed that he was ill when he claimed benefits, he had been allowed unemployment insurance benefits each week for a substantial number of weeks and feels it unfair for Iowa Workforce Development to now deny him unemployment insurance benefits.

Federal law requires that benefits be promptly paid to individuals who are unemployed and are claiming benefits. Because of this requirement, some claims are first allowed because there is a lack of initial disqualifying information, inaccurate information, or because of errors or omissions on the part of staff, due to the volume of work and staffing levels.

The law also requires that benefits be paid only to unemployed individuals who meet all eligibility requirements. Iowa Workforce Development regularly conducts reviews/audits to verify the claimants are eligible. When a review shows that unemployment insurance benefits have been improperly paid, the agency is required by law to correct the error, and to recover any benefit overpayments.

The evidence in the record does establish that Mr. Alicaic has not been able to work since opening his claim for unemployment insurance benefits, and fails to meet the requirement that he is able to work while claiming unemployment benefits. Accordingly, unemployment insurance benefits are denied as of June 3, 2018.

DECISION:

The agency representative's unemployment insurance decision dated November 9, 2018, reference 02 is affirmed. The claimant has not been able to work since establishing his claim for benefits and is currently not able to work. Accordingly, Mr. Alicaic is not eligible to receive unemployment insurance benefits until his circumstances have changed and the claimant presents sufficient information of his ability to work to remove the disqualification.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn