

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE MONTGOMERY
Claimant

APPEAL NO: 12A-UI-13646-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 07/15/12
Claimant: Appellant (4/R)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Lawrence Montgomery (claimant) appealed an unemployment insurance decision dated November 5, 2012, reference 02, which held that he was not eligible for unemployment insurance benefits because he was unable to work for QPS Employment Group, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 17, 2012. The claimant participated in the hearing. The employer participated through Lisa Apolonio, Placement Coordinator; Charles Macy, Assistant Branch Manager; and Rhonda Hefter, Employer Representative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to 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 was employed with this temporary employment agency since February 13, 2012. He was taken off work due to a non-work-related medical condition as of October 1, 2012 and was released without restriction on November 13, 2012.

The claimant is no longer employed with this employer but there has been no determination made with regard to the final separation.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

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 was under medical restrictions from a non-work-related medical condition from October 1, 2012 through November 13, 2012. He did not meet the availability requirements of the law for that time frame but does qualify for benefits thereafter, if he is otherwise eligible.

There has been a final separation from employment but these issues were not included in the notice of hearing so the case will be remanded.

DECISION:

The unemployment insurance decision dated November 5, 2012, reference 02, is modified in favor of the appellant. The claimant was not able and available to work from October 1, 2012 through November 17, 2012. He qualifies for benefits thereafter, provided he is otherwise eligible. The case is remanded for a review and determination on the final separation from employment.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs