

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BENNY BENA  
P.O. BOX 286  
PALO, IA 52324-0286**

**PARKER-HANNIFIN CORP.  
C/O TALX UCM SERVICES INC.  
P.O. BOX 283  
SAINT LOUIS, MO 63166**

**DIA APPEAL NO. 21IWDUI0190  
IWD APPEAL NO. 20A-UI-15184**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515) 281-7191***

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:**

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

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

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**ONLINE RESOURCES:**

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

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**BENNY BENA**  
Claimant

**DIA APPEAL NO. 21IWDUI0190  
IWD APPEAL NO. 20A-UI-15184**

**PARKER-HANNIFIN CORP.**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 30, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his voluntary leave of absence from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 21, 2021. The claimant, Benny Bena, appeared pro se. The employer, Parker-Hannifin Corporation, was represented by its Human Resources officer, Nicole Nielsen. All participants presented testimony. Official Notice was taken of the administrative file, which included the notice of telephone hearing, the transmittal form transmitting this case to DIA, the decision at issue herein, and the appeal request.

**ISSUE:**

Was the claimant able to and available for work, effective April 19, 2020?

**FINDINGS OF FACT:**

Claimant began working in the hose production area of the Parker-Hannifin Corporation in February of 1989. When the COVID-19 pandemic hit Iowa, claimant had concerns about continuing to work at the company. Claimant has underlying health concerns including heart disease and COPD that increase the risk of severe illness or death if he were to be infected by the coronavirus. Claimant spoke to his physician, who recommended that he not work. Claimant left work on April 2, 2020. His employer did not ask him to return to work until August 3, 2020, after they made changes to the work environment and felt they could keep their employees safe from getting infected. When the company notified him that they would like him to come back the next week, he agreed and returned to work. Claimant stated if they had notified him prior to that date that they wanted him to come back to work, he would have done so. Nielsen agreed that they did not call him to come back to work until August 3, 2020, and he returned to work full time on August 10, 2020.

Claimant applied for unemployment benefits on April 19, 2020. He was approved for benefits while he was off work, however, the Department then issued a decision on October 30, 2020,

denying his benefits due to being voluntarily unemployed and not available for work as of April 19, 2020. This appeal followed.

### **REASONING AND CONCLUSIONS OF LAW:**

The Department determined Claimant was not available for work and on that basis denied benefits. For the reasons that follow, the administrative law judge concludes the claimant was available for work from April 19, 2020 through August 10, 2020.

Iowa Code § 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 § 96.1(A), subsection 37, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.1(A), 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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. 871-24.22(2) provides in addition:

(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 (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.

To be able to work, “[a]n 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.” *Sierra v. Emp. Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993) (quoting *Geiken v. Lutheran Home for the Aged Ass’n*, 468 N.W.2d 223 (Iowa 1991)); Iowa Admin. Code r. 871-24.22(1). “An evaluation of an individual’s ability to work for the purposes of determining that individual’s eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides.” *Sierra*, 508 N.W.2d at 723. “Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits.” *Gilmore v. Emp. Appeal Bd.*, No. 03-2099, 2004 WL 2579240, at \*1 (Nov. 15, 2004) (quoting *White v. Emp. Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992)).

Here, I conclude claimant was able and available for work. The existing framework was not written with a pandemic in mind, but we can adapt it to this situation. The question is designed to ask whether the claimant is “genuinely attached to the labor market.” Here claimant remained attached to the labor market; the labor market let him down when it could not guarantee his safety. Once the employer determined that their work environment was safe for him to return to work and requested his return, he complied. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The October 30, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was able and available to work. Benefits are allowed, provided claimant is otherwise eligible.



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Tricia A. Johnston  
Administrative Law Judge

January 22, 2021  
Decision Dated and Mailed

TAJ/AA

CC: Benny Bena, Claimant (by First Class Mail)  
Parker-Hannifin Corporation, Employer (by First Class Mail)  
Nicole Merrill, IWD (By Email)  
Joni Benson, IWD (By Email)