

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY HALLADAY
Claimant

APPEAL NO: 07A-UI-10611-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

**OC: 10/14/07 R: 02
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Jeremy Halladay (claimant) appealed an unemployment insurance decision dated November 14, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Mainstream Living, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on December 4, 2007. The claimant participated in the hearing with his mother, Jeannette Arringdale. The employer participated through Marcanne Lynch, Human Resources Director. 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 as a full-time supported living technician from May 16, 2005 through October 1, 2007 when he went on a non-work-related medical leave. He had surgery and was unable to work from October 1, 2007 until he was released on December 3, 2007. The claimant has now returned to work full-time.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

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 24.23(1), (23) 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.

(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.

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). The claimant admitted he was unable to work from October 1, 2007 through December 1, 2007 due to a non-work-related medical condition. He was released to return to work without restrictions on December 3, 2007. The claimant has returned to work full-time and is now unavailable. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated November 14, 2007, reference 02, is affirmed. The claimant was not able and available to work as of October 1, 2007. Benefits are denied

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs