

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK A KRABER
Claimant

DEERE & CO – DES MOINES WORKS
Employer

APPEAL NO. 14A-UI-08579-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/15/13
Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 14, 2014, reference 02, which held claimant was able and available for work. After due notice, a hearing was scheduled for and held on September 8, 2014. Employer participated by Joshua Maclean, Labor Relations Representative. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

The issues in this matter are whether claimant is able and available for work and whether claimant's receipt of vacation pay in September 2013 makes him ineligible for unemployment benefits received in July 2014.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off from work indefinitely on September 15, 2013. He was given the option on that date to withdraw his vacation pay. Claimant elected to withdraw his vacation pay. At that time he did not know if he would be recalled back to work at a later date.

Claimant was recalled to work by employer on January 6, 2014. On July 21, 2014 through July 25, 2014 claimant was laid off from work again. Claimant is still employed by employer; he applied for benefits for those days when he was laid off in July 2014.

REASONING AND CONCLUSIONS OF LAW:

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 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".

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(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.

Inasmuch the claimant was laid off from work, and he was available to work during those dates, he has established the ability to work. Claimant's collecting of vacation pay in September 2013 was not attributable to the days he was laid off in July 2014. At the time claimant received his vacation pay he did not know he would be recalled back to work. The amount he received does not count against his eligibility to receive unemployment benefits. Benefits shall be allowed effective July 20, 2014.

DECISION:

The decision of the representative dated August 14, 2014, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective July 20, 2014, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/can