

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMEL LJAKIC**  
Claimant

**TITAN TIRE CORPORATION**  
Employer

**APPEAL 19A-UI-05712-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/23/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On July 17, 2019, the claimant filed an appeal from the July 15, 2019, (reference 01) unemployment insurance decision that denied benefits based on claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2019. Claimant participated personally and through a Bosnian Interpreter with CTS Language Link. Claimant was represented by attorney Marlon Mormann. Employer participated through human resources manager Michael Gerlach. Claimant's Exhibit A was received. Official notice was taken of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work effective June 23, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 24, 1998. Claimant last worked as a full-time press operator.

On April 25, 2017, claimant injured his left leg at work. Claimant filed a claim for workers' compensation benefits. The medical provider who treated claimant on behalf of the workers' compensation benefit insurance carrier released claimant to return to work with no restrictions on August 2, 2017, and has not recommended any continuing treatment or restrictions since that date.

Claimant continues to experience medical issues that he believes are related to the work injury.

Claimant last worked on March 28, 2019. At that time, claimant's personal medical provider gave him restrictions of working only six hours per day. Claimant gave the restrictions to employer. Employer stated it could not accommodate the restrictions and put claimant on medical leave. Claimant remains on leave as of the date of the hearing.

The restrictions issued by claimant's personal medical provider stayed in place until August 2, 2019, when new restrictions were issued. The restrictions include no lifting over 15 pounds, no repeated bending/stooping, no continual standing/walking/sitting/chairs, and no pivoting.

Claimant has not yet personally presented the restrictions to employer, but claimant's attorney emailed a copy of the restrictions to employer's attorney as a proposed exhibit for the unemployment insurance appeal hearing. The doctor's note was entered into the record as Exhibit A and official notice was taken of Mr. Mormann's email.

Claimant proposes that he could drive a fork lift or work security for employer. Employer contracts with a third-party vendor for security services. Working as a fork lift driver would require claimant to be able to lift more than 15 pounds.

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

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective June 23, 2019.

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".

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.
- b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. **This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.**

“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 v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). This means that when evaluating whether a person with a protected disability is able and available to work, the reasonable accommodation requirements imposed on employers under federal, state, and local laws must be taken into account. *Id.* Generally the worker must be “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.” 871 IAC 24.22(2).

The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code §96.6(2).

From June 23, 2019, through August 2, 2019, claimant's medical provider restricted him from working on a full-time basis. Therefore, he is not considered able to or available for work during that time period.

From August 2, 2019, going forward, claimant's medical provider restricted him from doing continuous sitting or standing. Claimant gave two options of alternative work he could perform—security work and forklift driving. Security work involves continuing sitting, standing, or walking. Forklift work also involves continuous sitting as well as being able to lift more than 15 pounds, which claimant cannot do. There is no accommodation that would be reasonable that would allow claimant to perform the essential functions of those jobs.

Claimant has not established he is able to and available for work on a full-time basis, even when considering a reasonable accommodation.

**DECISION:**

The July 15, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective June 23, 2019. Benefits are withheld until such time as the claimant obtains a medical release to return to work, offers his services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if he is involuntarily separated before that time.

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Christine A. Louis  
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Decision Dated and Mailed

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