

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERBERY L HUNT
Claimant

**ANNA ENTERPRISES
STAFFING SOLUTIONS**
Employer

APPEAL 16A-UI-09346-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/31/16
Claimant: Appellant (2-R)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 22, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2016. Claimant participated and was represented James R. Hamilton. Employer participated through Bill Vansloun, Manager. Claimant's exhibit A was entered and received into the record. Employer's exhibit one was entered and received into the record.

ISSUE:

Is the claimant able to and available for work effective July 31, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was had to allegedly work related injuries. As of June 13 the claimant was working for another employer (Charles Drake and Associates) and suffered an alleged work injury. He was placed on work restrictions that included no overhead lifting over five to ten pounds, with either arm, and no pushing or pulling over five to ten pounds. Due to those restrictions, he stopped working for the other employer.

The claimant had previously worked for this employer, Staffing Solutions under similar work restrictions. Even as late as May 2016 he was provided with light duty work at a dog kennel where he was wrapping tape around pipes. The claimant has worked at gainful employment with similarly restrictive work restrictions.

Staffing Solutions offered him work on July 11 at Maple Village apartment complex performing grounds maintenance work. Maple Village had conveyed to Staffing Solutions that any employee they sent to work had to be able to lift up to 100 pounds. When the claimant accepted the job assignment at Maple Village he did not tell anyone at Staffing Solutions that he had any current work restrictions. Any restrictions the claimant had from a prior injury with this employer had been lifted as of May 26, 2016.

On July 28 Staffing Solutions inadvertently learned that the claimant had work restrictions when they received a fax from Concentra. On Friday July 29 the claimant called Staffing Solutions and left them a voice mail message indicating he would not be at work that day because he was having some surgery. The employer tried to call the claimant but could not get ahold of him on the telephone. Staffing Solutions had notified Maple Village that the claimant would not be at work on July 29 due to surgery.

On August 1 the claimant showed back up to Maple Village and worked for two hours before anyone at Staffing Solutions learned he had gone to work. After learning the claimant was at work at Maple Village Mr. Vansloun notified him that he would not be allowed to continue working for Maple Village with his current work restrictions. That was claimant's last assignment with Staffing Solutions. No fact-finding interview has been held on the claimant's separation from this employer or from his last employer Charles Drake and Associates.

The claimant continues to look for work and believe even with his lifting restriction he could work as a cashier, mopping and sweeping, putting together boxes and for a fast-food restaurant. He has performed all of those types of jobs previously.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 31, 2016.

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.

The claimant has current work restrictions that are the same as those he had in May 2016. He was able to work under those work restrictions previously. While his restrictions are limiting he has demonstrated that he is able to perform work under those restrictions that is similar to what he had previously performed. According, under these circumstances the claimant is considered able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The separation from both Staffing Solutions and Charles Drake and Associates are remanded to the UISC for an initial review and determination.

DECISION:

The August 22, 2016, (reference 02) decision is reversed. The claimant is able to work and available for work effective July 31, 2016. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs