

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROBERT A WEYHRAUCH**  
Claimant

**RGIS LLC**  
Employer

**APPEAL 16A-UI-13519-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/16**  
**Claimant: Appellant (3)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 15, 2016, (reference 02) unemployment insurance decision that denied benefits from December 18, 2016 through January 7, 2017. The parties were properly notified about the hearing. A telephone hearing was held on January 12, 2017. Claimant participated. Employer did not participate. Official notice was taken of the administrative record of claimant's wage history and benefit payment history.

**ISSUE:**

Is the claimant able to work and available?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired to work as an inventory auditor. The week beginning December 18, 2016, claimant worked 3.58 hours for the employer. On December 20, 2016, claimant had surgery. After surgery, claimant was precluded from working until a future date. Claimant's doctor has not released him to return to work since his surgery. Claimant will be reassessed by his doctor on Tuesday, January 17, 2016. The employer is aware claimant is unable to work. The employer has not scheduled claimant to work since his surgery.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work effective December 18, 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(2) 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.

(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 physician 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. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 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* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar 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." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant had surgery on Tuesday, December 20, 2016 and has been prohibited from working since his surgery. Inasmuch as the treating physician has not released claimant to return to work with or without restriction, he has not established his ability to work effective December 18,

2016 (for the week beginning December 18, 2016 claimant was unavailable for work the majority of the work week). Benefits are withheld until such time as claimant obtains a medical release to return work.

**DECISION:**

The December 15, 2016, (reference 02) unemployment insurance decision is modified in favor of the respondent. Claimant is not able to work and available for work effective December 18, 2016. Benefits are withheld until such time as 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs