

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA L HANAWALT
Claimant

APPEAL 21A-UI-16624-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

**OC: 04/11/21
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Joshua L. Hanawalt, filed an appeal from the July 22, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to and available for work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on September 21, 2021. The claimant participated personally. The employer, The American Bottling Company, did not respond to the hearing notice and did not participate. Claimant's Exhibits A through C were admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work effective April 11, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an order picker beginning in June 2019. Claimant last worked for the employer in July 2020, at which time he endured a work-related injury. Thereafter, he saw doctors and physical therapists to recover from the injury.

At some point before he filed his claim for benefits, effective April 11, 2021, claimant separated from employment with the employer. Also around that time, his doctor updated his work-related restrictions. Claimant is prohibited from repetitive bending and twisting, and has a limit on how much he can lift and carry. He could not continue to do the warehouse work he had been doing at the time of the injury, but is able to work in a less-physically-strenuous position.

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 April 11, 2021.

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.

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. Emp't Appeal Bd.*, 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*, 508 N.W.2d at 723. The court in *Gilmore v. Emp't 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)).

Since the employment ended, claimant is no longer obligated to return to employer upon his medical release to offer his services. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Since he is able to perform less strenuous jobs than the one he held most recently with the employer, he is considered able to work even if he cannot yet return to a job as most recently performed for the employer. Claimant is considered able to work effective April 11, 2021.

Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The July 22, 2021, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective April 11, 2021. Benefits are allowed, provided he is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

September 24, 2021
Decision Dated and Mailed

ar/mh