

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DAVID MAYEN**  
Claimant

**APPEAL NO: 17A-UI-02222-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KANSAS CITY SAUSAGE COMPANY LLC**  
Employer

**OC: 01/29/17**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 21, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 22, 2017. The claimant participated in the hearing. John Anderson, Human Resources Director, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time meat cutter for Kansas City Sausage Company on December 2, 2016. He broke his leg January 28, 2017, and was unable to work effective January 30, 2017. The claimant did not work for the employer long enough to qualify for FMLA or any other leave programs and when he notified the employer he would likely be off another six weeks February 14, 2017, the employer determined it could no longer hold the claimant's job and his employment was terminated.

The claimant provided the Department with a note from his treating physician dated February 13, 2017, stating he could perform work if he could be in a sitting position.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work.

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.

While the claimant is unable to perform the essential functions of his previous position, he is able to perform sedentary work that allows him to sit effective February 13, 2017. Because he is able to work in some type of employment engaged in by others, even if not the type of work the claimant has previously performed, he is deemed to be able and available for work effective the week ending February 18, 2017.

**DECISION:**

The February 21, 2017, reference 02, decision is affirmed. The claimant was not able and available for work the two weeks ending February 11, 2017, but is considered able and available for work effective the week ending February 18, 2017.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs