

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CULLEN W. GEHRKE**  
Claimant

**DEERE & COMPANY**  
Employer

**IWD Appeal No. 21A-UI-03570**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 19, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 24, 2021. The claimant, Cullen Gehrke, appeared and testified. The employer, Deere & Company, participated through human resources representative Janice Gordon. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records, including the fact-finding documents.

**ISSUES:**

Is the claimant able to, and available for, work, effective November 1, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on March 7, 2011. He remains employed by the employer, full-time, as an assembler.

Claimant filed for unemployment benefits when he was temporarily laid off in November 2020. Over the course of the past year, during the ongoing COVID-19 pandemic, the employer has periodically laid off employees for a lack of work, usually for a week at a time. Such was the case with claimant. At the time he was laid off, he was given a date certain upon which to return to work, a week after his layoff. He did return to work on the appointed date and has continued to remain employed by employer since, with the exception of another week-long layoff in January 2021.

Claimant's application was denied. He filed a timely appeal, which his employer supports.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code section 96.1A(37)(c) provides:

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Administrative Code rule 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.

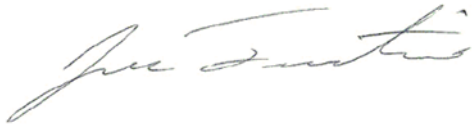
To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Empl't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken 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. "Insofar 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." *Gilmore v. Empl't Appeal Bd.*, No. 03-2099, 2004 WL 2579240, at \*1 (Nov. 15, 2004).

Here, because claimant was laid off due to a lack of work for a period of time less than four consecutive weeks, claimant was temporarily unemployed as defined by section 96.1A(37)(c). As a result, the "able and available" requirement is waived. Iowa Code § 96.4(3). The decision finding otherwise is reversed. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The January 19, 2021 (reference 01) unemployment insurance decision is reversed. Benefits are allowed.



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Joseph Ferrentino  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division

March 26, 2021  
Decision Dated and Mailed

JF/lb