

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAX B BREON
Claimant

LIEBSCH CONSTRUCTION
Employer

APPEAL 19A-UI-07023-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/04/19
Claimant: Respondent (2R)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Max Breon (employer) appealed a representative's August 23, 2019 decision (reference 01) that concluded Max Breon (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Andrew Liebsch, Owner.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in June 2019, as a full-time carpenter. The employer reduced his hours in August 2019, when the work available was not work which the claimant was able to perform. When he was hired, the claimant represented he was able to perform the work. When the employer asked him to perform the work, the claimant appeared to be medically unable to perform some of the work.

The claimant filed for unemployment insurance benefits with an effective date of August 4, 2019. He received \$162.00 in benefits for the week ending August 10, 2019. The claimant continues to perform limited work for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able and available for work as of August 4, 2019.

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 96.19, 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. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee limits his hours for a particular reason or he is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant appeared to be unable to perform full-time work due to his health condition. He is considered to be unavailable for work as of August 4, 2019. Accordingly, benefits are denied.

The issue of the overpayment of unemployment insurance benefits is remanded for determination.

DECISION:

The representative's August 23, 2019, decision (reference 01) is reversed. The claimant is not able and available for work as of August 4, 2019. Benefits are denied.

The issue of the overpayment of unemployment insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs