

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LUKE S WILLIAMS
Claimant

TUCKER STAFFING LLC
Employer

APPEAL NO. 20A-UI-00448-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/15/19
Claimant: Respondent (2R)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 13, 2020 reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on February 3, 2020. Employer participated by Jason Bailey. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits 1-2 were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: As claimant did not participate in the hearing, all findings of fact are derived from employer's testimony.

Claimant worked on and off for employer on a number of occasions. Most recently, claimant worked for employer between May, 2019 and July 30, 2019 as a carpet cleaner. At all times during this employment there was ongoing work available for claimant.

On July 30, 2019 claimant walked off the job. As claimant did not participate in the hearing, claimant has not shown that he was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(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.

The claimant has not established the ability to work for the period after July 30, 2019. Benefits are withheld until such time as the claimant shows that he is able and available to work.

This matter is remanded to the fact finder for a determination on the separation issue.

DECISION:

The decision of the representative dated January 13, 2020, reference 02 is reversed and remanded to the fact finder for a determination of the separation issue in this matter. Claimant is not eligible to receive unemployment insurance benefits, effective July 30, 2019 as claimant has not shown he was able and available for work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn