

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LANCE M LESHER
Claimant

APPEAL 16A-UI-12091-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JONDLE ENTERPRISES INC
Employer

**OC: 09/04/16
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 3, 2016, (reference 02) unemployment insurance decision that denied benefits based upon his availability for work. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2016. Claimant participated. Employer participated through owner Tim Jondle.

ISSUE:

Is the claimant able to work and available for work effective September 4, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for employer as a truck driver. Claimant has a pre-existing knee injury that has caused him severe back pain. On August 29, 2016, claimant informed employer he could not return to work due to back pain.

Claimant saw a doctor and was prescribed medication and physical therapy. The medication made claimant dizzy and drowsy. Claimant is scheduled to undergo knee surgery, which will hopefully alleviate his pain.

Claimant's work experience includes driving truck and restaurant work. However, due to his physical ailments, claimant is unable to accept work in either field.

Claimant is looking for desk jobs, but has never held a desk job before.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective September 4, 2016.

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. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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. Employment Appeal Board*, 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* at 723. The court in *Gilmore v. Empl. 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)).

Although claimant is looking for a desk job, he has no experience working in an office position. Claimant has a non-work related medical condition that prevents him from working in the fields in which he may realistically find employment. Claimant has not been released by his treating physician to work in either field, with or without restriction. Thus, he has not established he is able to or available for work for purposes of unemployment law.

DECISION:

The November 3, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work or available for work effective September 4, 2016. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which he is capable of performing given his education, training and work experience, and any medical restrictions.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:

<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

http://www.youtube.com/watch?v=_mpCM8FGQoY