

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BART D CROTTS**  
Claimant

**BRICKER GROUP LLC**  
Employer

**APPEAL 15A-UI-10322-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/15  
Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated September 3, 2015, (reference 02) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on September 29, 2015. Claimant participated personally. Employer participated by Cyndi Bowlby, Vice President, and was represented by Stuart J. Cochrane, Attorney at Law. Employer's Exhibits 1 through 7 and Claimant's Exhibits A through C 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: Claimant was having difficulties being available for work as he was dealing with health issues, and was receiving medical treatment. Claimant began missing work in August as he was dealing with some symptoms related to epilepsy. His absences were making it difficult for the employer to schedule him for work as he had missed work eight times in late July and early August.

Employer informed claimant that he would not be allowed to return to work without a doctor's release back to work without restrictions on or about August 11, 2015. Claimant did provide a letter to employer on or about August 12, 2015 but it did not release claimant back to work without restrictions, and he was not allowed to return to work at that time. In response to employer's request claimant obtained another letter from his doctor on August 13, 2015 that released him back to work without restrictions. He provided a copy of that letter to employer, but was not allowed to return to work as of that date. Claimant's involuntary medical leave continued through August 30, 2015. Claimant received another letter from his doctor that released him to return to work on or about August 31, 2015. He forwarded that information to employer, but was still not allowed to come back to work at that time. Claimant reasonably

believed he had been discharged by employer as of that date, and he began seeking work elsewhere.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 30, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

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. Emp'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* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective August 30, 2015.

**DECISION:**

The decision of the representative dated September 3, 2015, (reference 02) is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective August 30, 2015, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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