

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL J STRICKLER
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 16A-UI-12424-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/21/16
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:

Daniel J. Strickler (claimant) filed an appeal from the November 15, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the determination he is unable to perform work at this time due to injury. The parties were properly notified about the hearing. A telephone hearing was held on December 21, 2016. The claimant participated personally and was represented by Brian Ulin. Swift Pork Company (employer) participated through Human Resources Supervisor Rogelio Bahena.

ISSUE:

Is the claimant able to and available for work effective October 16, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time in Maintenance beginning on September 7, 2005 and is still currently employed by the employer. The claimant's last day physically worked was June 20, 2016, when he went on a leave of absence due to a non-work related injury.

On October 13, 2016, the claimant's doctor released him back to work with restrictions. The claimant was not to lift more than one pound with his left arm and shoulder and no overhead reaching or repetitive work. The claimant notified the employer of his restrictions, but was told there were no positions available for him that would accommodate his restrictions. On December 12, 2016, the claimant's doctor modified the claimant's restrictions to lifting no more than 30 pounds. The claimant again notified the employer and was told there were no positions available for him that would accommodate his restrictions.

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 October 16, 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. 871-24.22(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.

Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work without restriction, he has not established his ability to work while still an employee of the employer effective October 16, 2016. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition for unemployment insurance purposes. Since the claimant has not been released to perform his full work duties, he is not considered able to or available for work.

DECISION:

The representative's decision dated November 15, 2016 (reference 02) is affirmed. The claimant is not able to work and available for work effective October 16, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless he is involuntarily separated before that time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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