

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROBERT T CODY**  
Claimant

**POLARIS INDUSTRIES INC**  
Employer

**APPEAL 19A-UI-10289-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/24/19**  
**Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

On December 27, 2019, the employer filed an appeal from the December 17, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a short-term layoff. The parties were properly notified about the hearing. A telephone hearing was held on January 22, 2020. Claimant participated. Employer participated through human resource generalist Abby Ortzel and human resource assistant Kelly Sievert. Employer's Exhibit 1 was received.

**ISSUE:**

Is the claimant totally unemployed?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer as a full-time material handler. Claimant's last day of work was March 1, 2019.

Claimant has a history of traumatic brain injury. Claimant injured his brain 10 years ago while working for a different employer. Claimant fell at work with this employer on March 1, 2019, and sustained further traumatic brain injury. As a result of the injuries, claimant experiences complex partial seizures, with the most recent episodes occurring at the end of June 2019.

Claimant filed a claim for workers' compensation benefits. While the claim was initially denied, it is being litigated and claimant continues to see a company and personal doctor. Claimant is not currently receiving workers' compensation benefits.

Claimant was on medical leave until his short-term disability benefits ran out at the beginning of September 2019.

Claimant filed a claim for long term disability benefits, but no determination has been made at this time.

On September 11, 2019, claimant's personal doctor released claimant to return to work with employer on a part-time basis with restrictions of not being allowed to climb to high places, no operation of heavy machinery, and no engaging in any activity that could be hazardous if claimant has a seizure. Claimant submitted the release to employer.

After receiving the release, employer asked claimant's personal doctor for clarification on what duties claimant could perform and for what amount of time. The personal doctor only clarified that claimant could work part-time, up to eight hours per day, as tolerated.

As a material handler, claimant worked around heavy machinery and often drove a forklift. However, there are also duties involving placing parts into bins. Claimant has proposed to employer that he could perform the duties involving placing parts into bins. Employer has declined to return claimant to work in that position or any other position because it believes claimant could be injured if he has a seizure.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed and available for work effective November 24, 2019.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time,

if the individual's employment, although temporarily suspended, has not been terminated.

In this case, claimant has not been working any hours. Therefore, he is considered totally unemployed and must be able to and available for work in order to be eligible for benefits.

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.

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.

In this case, the injury is considered work-related for purposes of unemployment insurance benefits only. The workers' compensation case has not been resolved and claimant's personal medical provider opined that claimant did further injure his brain when he fell at work on March 1, 2019.

Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The representative's decision dated December 17, 2019, (reference 01) is affirmed. The claimant is able to work and available for work effective November 24, 2019. Benefits are allowed, provided he is otherwise eligible.



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Christine A. Louis  
Administrative Law Judge  
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Fax (515)478-3528

January 24, 2020  
Decision Dated and Mailed

cal/scn