

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MARCUS A JACOBS**  
Claimant

**GO DADDY SOFTWARE INC**  
Employer

**APPEAL 19A-UI-03849-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/31/19  
Claimant: Appellant (2R)**

---

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

On May 10, 2019, the claimant filed an appeal from the May 2, 2019, (reference 02) unemployment insurance decision that denied benefits based on a determination that he is not able to work due to illness. The parties were properly notified about the hearing. Claimant participated and testified. Employer participated through Employee Relations Specialist Kris Meyer. A telephone hearing was held on June 3, 2019. The administrative record was left open until 12:30 p.m. on June 5, 2019 to allow claimant time to obtain and submit a letter from his care provider. That letter was admitted, without objection, as claimant's Exhibit A.

**ISSUE:**

Is claimant able to and available for work effective March 31, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 10, 2016. Claimant last worked as a full-time hosting specialist. Claimant last worked on December 1, 2018. Claimant applied for a leave of absence to be effective December 4, 2018 because he was having issues with anxiety caused by his job. Claimant was subsequently separated from employment, at some time prior to filing his original claim for benefits. Claimant's mental health provider advised claimant not return to this employer, due to the issues that employment caused for his anxiety. The provider indicated claimant could pursue other work in areas where he had prior experience such as sales, media, public relations, construction, and marketing. (Exhibit A).

**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 March 31, 2019.

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.

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)).

Claimant took a leave of absence in December 2018 due to anxiety triggered by his job. Claimant was separated from employment prior to being released to return to his job, though his mental health provider ultimately recommended he not return to that specific position for reasons related to his health. Claimant's provider has released to him to return to a variety of other positions in which he had prior work experience. Since the employment ended, claimant is no longer obligated to return to employer. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

At the time of the hearing, testimony was given indicating claimant has been separated from employment. No initial determination has been made in regards to claimant's separation from employment. That matter must be remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

**DECISION:**

The May 2, 2019, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective March 31, 2019. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The issue of claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs