

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS W HARPER
Claimant

CITY LAUNDERING CO
Employer

APPEAL 18R-UI-00057-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/17
Claimant: Appellant (2R)

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 9, 2017, (reference 06) unemployment insurance decision that denied benefits. A first hearing was scheduled for December 1, 2017, but not conducted because the claimant/appellant failed to appear and his appeal was dismissed. Upon petition to the Employment Appeal Board, the claimant's request to reopen the matter was granted, and the Employment Appeal Board remanded the case for a new hearing. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2018. The claimant participated personally. The employer participated through Nicole O'Brien, human resources manager. Ken Schnor, service manager, also attended. Claimant Exhibit A was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective October 22, 2017 through November 11, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed and was permanently separated from with this employer. The issue of separation between the parties has been addressed in the reference 02 unemployment insurance decision.

Effective October 22, 2017, the claimant was under doctor's restrictions due to an injury to his right knee. The restrictions included limited standing and walking, sitting only. As a result, the claimant during this period applied for jobs consistent with his restrictions including cashiering and telemarketing. The claimant has work experience as a telemarketer. The claimant had no

other restrictions to employability during this time, and was released without restrictions effective November 7, 2017 from a treating physician. (Claimant Exhibit A). The claimant's availability beginning November 12, 2017, was addressed in the reference 09 unemployment insurance decision.

In his request for reopening for a new hearing, the claimant stated he was in Texas for a period of time, to be with his family in advance of his brother's deployment (See administrative record.). At the hearing, the claimant clarified the period of time to be from November 19 through November 29, 2017. During this period, he did make two weekly continued claims and was paid benefits for the two week period ending December 2, 2017.

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 for the period of October 22, 2017 through November 11, 2017.

Iowa Code section 96.4(3) (2017) provides: An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds: The individual is able to work, is available for work, and is earnestly and actively seeking work.... 871 IAC 24.22 expounds on this: 871—24.22 Benefit 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 burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Admin. Code r. 871-24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). 24.22(1)

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. *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). 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.

The question of work relatedness has no relevance to the question of availability. The limitation of the ability to work is the same for work related or non- work related conditions. Turning to the limitations themselves the administrative law judge concludes that they are not so restricting that the Claimant would not be able to perform any work for which the claimant was qualified, given his work restrictions. The claimant credibly testified he looked for work in seated positions, such as telemarketer, which was consistent with his work experience. The administrative law judge therefore concludes that the claimant is able to and available for work, even if he could not work his prior position with the restrictions. Benefits are allowed between October 22, 2017 and November 11, 2017, provided the claimant is otherwise eligible.

REMAND: The issue of whether the claimant was able to and available for work between November 19, 2017 and December 2, 2017, while he visited family in Texas, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The November 9, 2017, (reference 06) decision is reversed. The claimant was able to and available for work between October 22, 2017 and November 11, 2017. Benefits are allowed, provided he is otherwise eligible.

REMAND: The issue of whether the claimant was able to and available for work between November 19, 2017 and December 2, 2017, while he visited family in Texas, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs