

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JACOB FISHER**  
Claimant

**WEBSTER CITY CUSTOM MEATS INC**  
Employer

**APPEAL 20A-UI-01857-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/29/19**  
**Claimant: Respondent (3)**

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

**STATEMENT OF THE CASE:**

On February 28, 2020, Webster City Custom Meats Inc. (employer/appellant) filed an appeal from the February 24, 2020 (reference 05) unemployment insurance decision that found claimant was able to and available for work effective September 29, 2019.

A telephone hearing was held on March 17, 2020. The parties were properly notified of the hearing. Employer participated by President Constance Ingraham and Human Resources Manager Misty Kepler. Claimant participated personally.

Employer's Exhibits 1 and 2 were admitted.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time bacon press leader. Claimant's first day of employment was November 9, 2017. The last day claimant worked on the job was May 19, 2019. Claimant went on FMLA at that time due to a back injury. Employer discharged claimant when his FMLA was exhausted on August 22, 2019. Exhibit 1.

Claimant has had doctor-imposed restrictions since June 12, 2019. He is restricted from lifting over 25 pounds. He is also instructed to rarely lift, twist, turn, or squat. Claimant's doctor has generally instructed him to avoid staying in one position for too long as this can cause his back to stiffen up. Exhibit 2.

Claimant has in the past worked in jobs which require substantial physical exertion, such as factory and construction jobs, which he is largely unable to do under his restrictions. However, he

also has experience in customer service work, and is currently employed as a fast food worker. He is able to do that work within his restrictions.

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

For the reasons that follow, the February 24, 2020 (reference 05) unemployment insurance decision is MODIFIED in favor of Respondent. The administrative law judge concludes that claimant is able to and available for work effective August 22, 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.

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)).

Since the employment ended on August 22, 2019, claimant is no longer obligated to return to employer upon his medical release to offer his services. 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. Since he has performed jobs other than physically-demanding labor within the work history, he is considered able to work even if he cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of August 22, 2019. Since he is able to perform less strenuous jobs with fewer educational and training requirements than he held in his work history, he is considered able to work even if he cannot yet return to a job as most recently performed for the employer.

**DECISION:**

The February 24, 2020 (reference 05) unemployment insurance decision is MODIFIED in favor of Respondent. The administrative law judge concludes that claimant is able to and available for work effective August 22, 2019.



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Andrew B. Duffelmeyer  
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March 27, 2020  
Decision Dated and Mailed

abd/scn