

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MACHUL D BOM**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 19A-UI-02729-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/19**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability 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 April 1, 2019, the claimant filed an appeal from the March 29, 2019, (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was unable to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on May 1, 2019. Claimant participated and was represented by attorney Mark Sherinian. Employer did not participate. Claimant's Exhibits A and B were received into evidence.

**ISSUE:**

Is claimant able to and available for work effective March 3, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 3, 2017. Claimant last worked as a full-time production worker. On February 28, 2019 claimant was seen at Broadlawns Medical Center for knee pain and swelling. Claimant was taken off work until at least March 7, 2019. (Exhibit A). When claimant went in for a follow-up appointment on March 11, he was released to return to work with the restriction that he be allowed to sit if his knee began to hurt again. (Exhibit B). Claimant attempted to return to work on March 11, but was told he had been separated from employment. Claimant is no longer experiencing any knee pain or swelling. Claimant's primary work experience is in manufacturing and production positions. Claimant has not been conducting weekly job searches since being separated from employment.

**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 10, 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)).

Here, the claimant was completely taken off work by his doctor the week of March 3, 2019 and therefore was not able to or available for work for that week. Claimant was released to return to work effective March 11, 2019, with his only restriction being that he needed to be allowed to sit if his knee began to hurt. When claimant attempted to return to work on March 11, he was informed his position had been eliminated.

Since the employment ended on March 11, 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. Claimant provided credible testimony that his knee has completely healed and he is able to work without pain. Thus the claimant is considered as able to work as of March 10, 2019.

Claimant indicated he has not been conducting weekly job searches as required under the law. He 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 and should consider this as a warning of such.

**DECISION:**

The March 29, 2019, (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant is not able to work and available for work the week ending March 9, 2019, but is able to and available for work effective March 10, 2019. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

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

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs