

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TREVOR D GERHOLDT
Claimant

B & B MANUFACTURING INC
Employer

APPEAL 17A-UI-12692-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/05/17
Claimant: Appellant (4)

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 30, 2017, (reference 01) unemployment insurance decision that denied benefits based on his inability to work due to illness or injury. The parties were properly notified of the hearing. A telephone hearing was held on January 2, 2018. The claimant participated and was represented by attorney Natalie Clouse. The employer elected not to participate and submitted written notification of this decision. Claimant's Exhibits A and B were received into evidence.

ISSUE:

Is the claimant able to work and available for work effective November 5, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a metal worker from April 2016, until this employment ended on November 15, 2017, when he was discharged while on a leave of absence. On November 2, 2017 claimant went on Family Medical Leave for a non-work related medical issue. At this time claimant was unable to perform any kind of work. Claimant's treating medical provider issued a release for him to return to work without restriction on November 22, 2017. (Exhibit A). Claimant has no other restrictions on his ability to or availability for work and has been conducting at least two weekly job searches.

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 November 19, 2017.

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.

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.

Beginning November 2, 2017, claimant was restricted from performing any kind of work by his medical provider. Claimant therefore was not able to and available for work beginning November 5, 2017. However, claimant was issued a release to return to work without restriction on November 22, 2017. Since the employment ended on November 15, 2017, claimant was 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. Inasmuch as the treating physician had released claimant to return to work without restriction effective November 22, 2017 and he has no other restrictions on his ability to or availability for work, claimant is able to and available for work. Benefits are allowed beginning the week of November 19, 2017, provided claimant is otherwise eligible.

Claimant is on notice that he must continue to conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The November 30, 2017, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work from November 5, 2017 through November 19, 2017, but is able to work and available for work effective November 19, 2017. Benefits are allowed beginning the week of November 19, 2017, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs