

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANTHONY J HOFFMAN**  
Claimant

**APPEAL 17A-UI-07039-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 06/18/17**  
**Claimant: Respondent (1)**

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:**

The employer filed an appeal from the July 7, 2017, (reference 03) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2017. Claimant participated. Employer participated through leave of absence coordinator Marissa Vaca.

**ISSUE:**

Is the claimant able to work and available for work effective June 18, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time assistant store manager from 2013, through June 2, 2017. His last day of work was January 8, 2017, when he left work early to be life-flighted for emergency medical care. Family and Medical Leave Act (FMLA) leave was granted from January 9 to April 3, 2017, and then an additional accommodation leave was approved on April 24 for leave from April 3 to May 18, 2017. On May 17, Vaca mailed a letter to claimant's sister's post office box that his leave would expire on May 18, 2017, unless he provided more information or returned to work. Claimant received the letter and consulted his physician who told him nothing had changed. On May 24 claimant showed the store manager Kyle the medical information that nothing had changed and told him his next medical appointment was not until June 8, 2017. Claimant faxed the medical documents from the store to human resources and also mailed a hard copy to human resources. There was no further request for information. Vaca sent a termination letter on June 2, which claimant did not receive. On June 8 he found out lost his job when he went to the store to purchase an item. Retail service specialist Sky could not pull up his account. He saw store manager Kyle later that day who told him he had to let him go because of direction from the corporate office.

At the appointment on June 8, 2017, his physician restricted him from work that would require standing for more than three hours without a 40-minute rest period and limited him to lifting ten

pounds. At the June 18 appointment the same work limitations were affirmed. His next medical appointment is on August 8. Claimant is seeking retail work consistent with his work-release restrictions. He has multiple sclerosis (MS) and cannot work in a factory. He has experience with mechanical work but cannot perform that work because shops are not climate controlled for MS.

## 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 June 18, 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.

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.

Since the employment ended on June 2, 2017, claimant is no longer obligated to return to employer upon his medical release to offer his services. At that point, where claimant was separated from employment upon medical advice, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. He is considered able to work even if he cannot return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of June 18, 2017. 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.

**DECISION:**

The July 7, 2017, (reference 03) unemployment insurance decision is affirmed. The claimant is able to work and available for work effective June 18, 2017. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs