

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MATTHEW A BRINGMAN Claimant IOWA WORKFORCE DEVELOPMENT DEPARTMENT	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 15A-UI-00934-DT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 10/26/14 Claimant: Appellant (1)</div>
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Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Matthew A. Bringman (claimant) appealed a representative's January 16, 2015 decision (reference 06) that concluded he was not qualified to receive unemployment insurance benefits because he was not medically or physically able and available for work. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on February 17, 2015. The claimant participated in the hearing and was represented by Al Sturgeon, attorney at law. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant currently qualified for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant's most recent occupation was as a welder. Because of having had back fusion surgery, since at least October 26, 2014 he has been under medical restrictions that he work only in sedentary work, with a lifting restriction of no more than ten pounds, no prolonged standing, and no repetitive bending. The claimant is only seeking work as a welder or doing maintenance work. While he believes he might be able to perform either of these positions if the prospective employer could make accommodations, he could not identify what those accommodations might be. Without accommodations and his current restrictions, he would be unable to perform either of the positions for which he has been seeking work.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. To be found 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); Rule 871 IAC 24.22(1). “The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.” Rule 871 IAC 24.22(2). This necessitates that the claimant be making application for positions that he would be physically able to perform, even if not within his customary occupation.

The claimant has not demonstrated that he has been or currently is able to work in any position for which he is actually seeking employment. Benefits are denied until he can demonstrate that he has become able and available for some work he is actively seeking, if the claimant is then otherwise eligible.

The administrative law judge observes that as there was another representative’s decision issued on January 7, 2015 (reference 03) which concluded that the claimant had a disqualifying separation from employment from his most recent employer which has not been appealed or reversed, the claimant would not be otherwise eligible even if he subsequently becomes qualified as able and available for work until he has satisfied the conditions of the January 7, 2015 (reference 03) decision to requalify by earning ten times his weekly benefit amount.

DECISION:

The representative’s January 16, 2015 decision (reference 06) is affirmed. As of October 26, 2014 through at least the date of the hearing the claimant has not been and is not able and available for work. Benefits are denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs