

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TODD W QUINT
Claimant

ECHOSPHERE LLC
Employer

APPEAL 15A-UI-03542-GT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/08/15
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 11, 2015, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on April 28, 2015. Claimant participated personally. Employer participated by Michelle Curry, Human Resources Manager. Employer's Exhibits 1 through 4 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: On or about January 12, 2015 claimant was placed on a voluntary leave of absence. Claimant was working as a warehouse supervisor, and driving a motor vehicle was part of his job duties. Claimant was charged with operating a motor vehicle while under the influence of an intoxicating substance, and as a result his license was suspended.

Employer was unable to accommodate claimant's work restriction at that time. Employer agreed to place claimant on a leave of absence, and the claimant was instructed to keep in contact with the employer and keep them apprised of when his license suspension might be lifted.

The employer sent a written notice to claimant on or about January 27, 2015 memorializing the agreement between the parties which requested that claimant contact employer within Seven days of receiving the letter. Claimant did respond to the letter in a timely manner on or about February 6, 2015 and he provided employer with his court dates. The employer sent claimant a second written notice on March 4, 2015 which terminated claimant's employment at that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 physician 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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as claimant's inability to work was not work-related or otherwise attributable to the employer and the claimant had not resolved the matter which suspended his driver's license which prevented him from performing his job duties prior to his termination, the claimant had not established his ability to work up to that date. Once the employment ended on March 4, 2015, claimant was no longer obligated to return to employer to offer his services once his work restrictions have been lifted. 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. 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 March 5, 2015. Benefits are withheld beginning on February 8, 2015 through March 4, 2015. Benefits shall be allowed effective March 5, 2015.

DECISION:

The decision of the representative dated March 11, 2015, (reference 01) is modified in favor of the appellant. Claimant is not eligible to receive unemployment insurance benefits, effective February 8, 2015 through March 4, 2015. The claimant is able to work and available for work effective March 5, 2015. Benefits are allowed beginning on that date.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs