

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**JERRY A KITT**  
Claimant

**MANAGEMENT & TRAINING  
CORPORATION**  
Employer

**APPEAL NO. 16A-UI-04555-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/27/16**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 15, 2016 reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 3, 2016. Claimant participated personally and was represented by counsel, Eric Bair. Employer participated by Lisa Katzer and Darin Schillerberg. Claimant's Exhibits A-C 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: Claimant was injured at work. For two years after his injury, claimant continued to work under his doctor's restrictions, and worked part time, rather than full time as he had done prior to his injury.

Claimant received a permanent restrictions letter from his doctor on February 11, 2016. This letter made permanent the restrictions that were previously listed by his doctor as temporary restrictions. Soon after claimant had given the letter (Claimant Exhibit A) to employer, employer offered claimant two other jobs separate from the maintenance job he had been doing.

The two jobs both required that claimant have training in counselling, child care or vocational guidance. Additionally claimant was expected to have excellent written and verbal skills and computer proficiency. Claimant stated that he did not have the necessary computer proficiency or guidance experience required in the jobs offered. The offered jobs were at a distance of 25 miles from claimant's home, and offered 20 to 25 percent reductions in pay.

Employer stated that claimant working as a maintenance worker with his restrictions made it so that other maintenance men had to do extra work because claimant was so limited by his permanent medical restrictions.

**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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

The claimant in this matter has established the ability to work. Employer made a choice to remove claimant from a job he had done for two years. It is employer's prerogative to remove claimant from his job, but claimant remains able and able to do the job he has done for the last two years. Claimant committed no misconduct which led to his termination from his job. Benefits shall be allowed effective March 25, 2016.

**DECISION:**

The decision of the representative dated April 15, 2016, reference 03, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective March 25, 2016, provided claimant meets all other eligibility requirements.

---

Blair A. Bennett  
Administrative Law Judge

---

Decision Dated and Mailed

bab/css