

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**THOMAS D VOLKERT**  
Claimant

**APPEAL 19A-UI-06902-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANFINSON FARM STORE INC**  
Employer

**OC: 12/16/18  
Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

On August 28, 2019, the employer filed an appeal from the August 21, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a temporary layoff. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2019. Claimant did not register for the hearing and did not participate. Employer participated through owner and president John Anfinson.

**ISSUES:**

Is the claimant able to and available for work?  
Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in April 2019. Claimant last worked as a full-time, seasonal driver until the end of June 2019, when the work got slow. Claimant filed an additional claim for unemployment insurance benefits with an effective date of June 23, 2019.

Claimant had knee surgery at the beginning of July 2019. Claimant also let his temporary CDL expire at that time. Claimant needs a CDL to work as a driver. Employer had work available for claimant and talked to him about returning on approximately August 22, 2019, but claimant declined.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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. 871-24.23(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.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

In this case, the claimant has not established he was able to or available for work effective June 23, 2019. Claimant had knee surgery at the beginning of July 2019, and has not established that he was released to return to work after surgery. Claimant also let his CDL expire, which means he is not able to continue working as a driver.

Because claimant is not able to and available for work effective June 23, 2019, the administrative law judge will not address whether claimant refused a suitable offer of work on August 22, 2019.

Benefits are denied effective June 23, 2019.

**DECISION:**

The August 21, 2019, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective June 23, 2019. Benefits are denied.

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Christine A. Louis  
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Decision Dated and Mailed

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