

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOHN P MCKOWN**  
Claimant

**CUSTOM-PAK INC – LP2**  
Employer

**APPEAL 19A-UI-06292-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/14/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On August 11, 2019, the claimant filed an appeal from the August 5, 2019, (reference 02) unemployment insurance decision that denied benefits based on claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2019. Claimant participated. Employer participated through human resource manager Andrea Lawrence and machinery development manager Eric Hlubek.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 14, 2006. Claimant last worked as a full-time assembly technician.

Claimant had issues getting along with a co-worker that led to depression and anxiety. Claimant applied for Family and Medical Leave Act (FMLA) leave. Employer approved claimant to take intermittent leave as his condition flared. Claimant's last day of work was April 10, 2019.

Claimant was separated from employment on May 21, 2019.

As of the date of the hearing, claimant's medical provider had not released him to return to work.

**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 effective July 14, 2019.

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.

Inasmuch as the treating physician has not released the claimant to return to work, he has not established his ability to work.

**DECISION:**

The August 5, 2019, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective July 14, 2019. Benefits are withheld until such time as the claimant obtains a medical release to return to work.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

cal/scn