

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES D SHORT
Claimant

KEIM T S INC
Employer

APPEAL 15A-UI-13600-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/15/15
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:

The claimant filed an appeal from the December 8, 2015 (reference 01) unemployment insurance decision that found the claimant ineligible for benefits effective November 15, 2015. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2016. The claimant participated personally. Although properly notified for the hearing, the employer did not register a phone number for itself or representative to participate. Claimant's Exhibit A was admitted into evidence.

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: The claimant was last employed full time as an over-the-road truck driver and was separated from employment on November 3, 2015. The claimant filed his claim for unemployment benefits with an original claim date of November 15, 2015.

At the time of the claimant's separation, he was under medical care, and continues to be, for colon cancer. The claimant began chemotherapy in mid-November and is expected to complete treatment in May 2016. The claimant receives his chemotherapy every other week in Fort Dodge, Iowa and the treatment takes three days (Tuesday, Wednesday, and Thursday.) Due to the chemotherapy, the claimant has an increased sensitivity to cold. The claimant furnished a doctor's note reflecting the claimant can perform work indoors, and part-time, effective November 27, 2015 (Claimant's Exhibit A). At this time, the claimant's job searches include positions, such as indoor stocking of shelves.

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 § 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 and (2) 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.

(2) Available for work. 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

In this case, due to ongoing chemotherapy, the claimant has been placed on restrictions involving part-time work only, as well as indoor work (Claimant's Exhibit A). The wages from the claimant's most recent employer, as well as those contained within the claimant's base period, are based solely upon full-time work and, therefore, the claimant's existing restrictions are not compatible with the claimant being able and available for work. Effective November 15, 2015, benefits are withheld as the claimant is not able to and available for work. Benefits are withheld.

DECISION:

The December 8, 2015 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective November 15, 2015. Benefits are denied.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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