

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEVIN G ALSTON**

Claimant

**CINTAS CORPORATION NO 2**

Employer

**APPEAL 19A-UI-03515-SC**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/24/19**

**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

On April 29, 2019, Kevin G. Alston (claimant) filed an appeal from the April 19, 2019, reference 01, unemployment insurance decision that denied benefits effective March 31, 2019 based upon the determination he was not able to and available for work due to surgery. After due notice was issued, a hearing was held in Des Moines, Iowa at 1:00 p.m. on May 15, 2019 and was consolidated with the hearings for appeals 19A-UI-03516-SC, 19A-UI-03517-SC, and 19A-UI-03518-SC. The claimant participated. Cintas Corporation No 2 (employer) did not respond to the hearing notice and did not participate. The Claimant's Exhibit A was admitted into the record.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work effective March 31, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on April 10, 2018 as a full-time loader. He filed his original claim for benefits effective March 24, 2019 and his weekly benefit amount is \$369.00. The claimant worked his full-time hours for the week ending March 30. He earned gross wages in the amount of \$529.88. He worked on Monday and Tuesday of the week ending April 6 and earned gross wages in the amount of \$216.00.

The claimant was off work beginning April 3 because he had surgery. The claimant requested time off for his surgery which the employer granted. According to his doctor, he would be able to return to work on May 15. The claimant returned to work on April 29, earlier than his doctor predicted, and the last week he filed a continued weekly claim for benefits was the week ending April 27.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective March 31, 2019 through the week ending April 27, 2019. Benefits are denied.

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 provides, in relevant part:

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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was not able to or available for work because he had requested a leave of absence to have surgery and he had not been released by his doctor to return to work. He has not established that he was genuinely attached to the labor market. Accordingly, he is not eligible for unemployment insurance benefits. Benefits are denied effective March 31, 2019 through the week ending April 27, 2019.

**DECISION:**

The April 19, 2019, reference 01, unemployment insurance decision is modified in favor of the claimant. The claimant was not able to work and available for work effective March 31, 2019 through the week ending April 27, 2019. Benefits are denied.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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