

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEPHEN A SCHIFFKE
Claimant

APPEAL NO: 18A-UI-06027-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JEWELL MACHINE & FABRICATION
Employer

OC: 05/06/18
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 24, 2018, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 18, 2018. The claimant participated in the hearing. Adam Bentgen, Human Resources Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine operator for Jewell Machine & Fabrication from May 22, 2017 to April 23, 2018. On April 23, 2018, the claimant worked for approximately 30 minutes before notifying the employer his back hurt and he could not continue working. The claimant left work and went to see his physician who took him off work from April 23, 2018 to May 8, 2018, at which time the claimant could not yet return to work and consequently, the employer terminated his employment. There is no evidence that the claimant's back injury was work-related. On May 24, 2018, the claimant's treating physician wrote him a note indicating the claimant "is able to work in some capacity. Due to his low back pain I recommend that he either do a clerical job or perform light duty work at this time" (Claimant's Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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 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.

While the claimant may not be able to perform the essential functions of his previous position with Jewell Machine & Fabrication, because he is no longer employed there he does not have to be able to perform that job but rather must be able to perform some type of work somewhere. The claimant's treating physician suggested clerical work or light duty type work both of which the claimant shall make himself available. Under these circumstances, the administrative law judge must conclude the claimant is able and available for work effective the week ending June 2, 2018. Accordingly, benefits are allowed.

DECISION:

The May 24, 2018, reference 03, decision is reversed. The claimant is able to work and available for work effective the week ending June 2, 2018. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn