

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENNETH E KAY**  
Claimant

**AVERY TECHNICAL RESOURCES INC**  
Employer

**APPEAL 22A-UI-10068-LJ-T**  
  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On April 20, 2022, claimant Kenneth E. Kay filed an appeal from the April 13, 2022 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits from June 20, 2021 through October 30, 2021 due to injury. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Wednesday, June 8, 2022. Appeal numbers 22A-UI-10068-LJ-T and 22A-UI-10069-LJ-T were heard together and created one record. The claimant, Kenneth E. Kay, participated. The employer, Avery Technical Resources, Inc., did not appear for the hearing and did not participate. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Effective June 20, 2021, was 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 employment with Avery Technical Resources in June 2017. He worked for the company as a full-time Chief Level 2 Inspector. Claimant's position required both office work and field work, dealing with safety, environmental, and quality issues related to drilling for natural gas extraction.

On June 20, 2021, claimant was in a serious car accident that resulted in severe injury to his right ankle. Ultimately, this accident affected claimant's ability to perform field work for multiple months, as the injury required surgery and he could not stand or drive for months afterward. The employer discharged claimant on June 28, and claimant had surgery on June 29.

Immediately after surgery, claimant began looking for positions in his field that did not require field work. Some of these positions involve working from home 100% of the time, while other positions are in-house positions with companies. Claimant applied for the required two positions each week, and he looked for work diligently. Claimant was released to return to field

work with no physical restrictions effective August 29, 2021. At that point, he expanded his work search.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was unavailable for work for the one week ending June 26, 2021. Effective June 27, 2021, claimant was able to 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...

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.

(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(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.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law.

Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

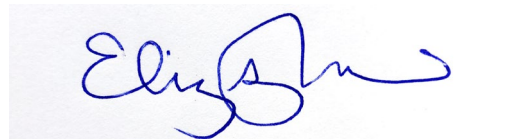
In this case, the claimant experienced a serious accident on June 20, 2021. Claimant severely injured his ankle and was unable to perform any field work, which was a significant component of his work for the employer. Claimant's ability to work *while still employed with the employer* is analyzed only as his ability to perform the specific job he held with that employer. Therefore, during the one week ending June 26, 2021, claimant has not established he was able to work.

After separating from the employer on June 28, 2021, claimant's ability to work is not measured by the one job he formerly held. Rather, claimant must be generally able to perform work that others engage in to support themselves. Claimant credibly testified that as soon as he left surgery, he was physically able to perform an office-only position in his field. He immediately commenced an active and earnest search for work consistent with this. Therefore, effective June 27, 2021, benefits are allowed.

**DECISION:**

The April 13, 2022 (reference 01) unemployment insurance decision is modified in favor of the claimant/appellant. Claimant was not able to work for the one-week period between June 20, 2021 and June 26, 2021. Benefits are withheld for that one week.

Effective June 27, 2021, claimant was able to work and benefits are allowed, provided he is otherwise eligible.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

June 9, 2022  
Decision Dated and Mailed

lj/lj