

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JEFFREY YEZEK**  
Claimant

**A A DELIVERY LLC**  
Employer

**APPEAL 21A-UI-05121-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/13/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 2, 2021, (reference 03) unemployment insurance decision that denied benefits based upon him not being able to and available for work effective December 13, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on April 19, 2021. Claimant participated.

**ISSUE:**

Was the claimant able to work, available for work effective December 13, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Jeffrey Yezek, began employment as a part-time as a truck driver with the employer, A&A Delivery LLC, from January 21, 2020. The claimant could not remember his hourly rate, but he received approximately \$750 per week. He worked a set schedule Monday through Friday.

On December 7, 2020, the claimant had a car accident. The claimant suffered a fracture in his right femur. The claimant was discharged from the hospital on December 10, 2020. The claimant received restrictions from his physician stating he could not drive. The restrictions stated he could occasionally perform desk work, stand and walk. The claimant spoke with Co-owner Adis Husj about his restrictions. Mr. Husj told the claimant they did not have any light duty assignments for him. Mr. Husj said he could not return until he was free of restrictions.

On March 8, 2021, the claimant was released to return to work without restrictions. The claimant has been performing his regular duties since then. The employer would have assigned him work if he had been able to perform his regular duties.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work, and made an earnest search for work for the period in question effective December 13, 2020.

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 (1) (10) and (35) provide:

**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.

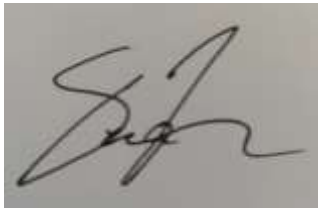
**(35)** Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming regular unemployment insurance 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 is correct that he did not request a leave of absence. However, the claimant was either ill or subject to his doctor's restrictions for the entire period he was away from work. These restrictions prevented him from working essential functions of his truck driving position. As a result, he is disqualified under Iowa Admin Code r. 871-24.22 (1) and (35). Since the claimant's injury was not work-related, the employer is not obligated to provide light duty work within his restrictions. Benefits are denied.

**DECISION:**

The February 2, 2021, (reference 03) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective December 13, 2020. Benefits are denied.



---

Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

April 27, 2021  
Decision Dated and Mailed

smn/ol