

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIEL W RITTER**  
Claimant

**DALTON CONCRETE CONSTRUCTION LLC**  
Employer

**APPEAL 20A-UI-01953-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/15/19**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

On March 3, 2020, the claimant filed an appeal from the February 26, 2020, (reference 04) unemployment insurance decision that denied benefits, effective January 26, 2020, based on claimant's inability to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on March 20, 2020. Claimant participated and testified. Employer participated through a written statement that was marked as Employer's Exhibit 1. Claimant's Exhibit A was also received 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: Claimant last worked for the employer as a full-time foreman on January 25, 2020, when he was separated from employment. Claimant is currently receiving chemo therapy treatments. Once per month claimant has to go in to complete treatment for three consecutive days. The treatment lasts four hours on the first day and two hours on the second and third days. Though treatment sometimes leads to some fatigue, it has not interfered with claimant's ability to work, or availability for work, other than during the hours he is getting his treatment. Claimant provided a letter from his oncologist confirming he is able to work without restriction. (Exhibit A). Claimant has had no other restrictions on his ability to or availability for work and has been working since February 18, 2020.

**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 effective January 26, 2020 through the week ending February 15, 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 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(35) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

....

(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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant is currently receiving chemo therapy treatments and is unavailable for work eight hours every month. Claimant remains able to and available for work the remainder of his regular work week. Claimant provided documentation from his doctor confirming he has no restrictions on his ability to work. Claimant has established he is able to and available for work from January 26, 2020, through the week ending February 15, 2020. Claimant has been working since February 18, 2020. As claimant is employed, he is no longer available for other work, effective February 16, 2020. Benefits are therefore denied effective February 16, 2020.

**DECISION:**

The February 26, 2020, (reference 04) unemployment insurance decision is modified in favor of the claimant. The claimant is able to work and available for work effective January 26, 2020 through February 15, 2020. Benefits are allowed during this period, provided he is otherwise eligible. Benefits are withheld effective February 16, 2020, as claimant is employed.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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