

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESMOND D ROGERS
Claimant

APPEAL NO: 17A-UI-09842-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/27/17
Claimant: Appellant (3)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated September 22, 2017, reference 05, that concluded he was not eligible to receive unemployment insurance benefits. A telephone hearing was held on October 12, 2017, pursuant to due notice. The claimant participated personally.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 12, 2016, as a full-time floor lead. He received the employer's handbook. The employer had a policy that terminated employees who accumulated more than seven attendance points.

The claimant requested and was granted a week's vacation. He did not know he would be assessed attendance points for his vacation. He was absent two other times during his employment. The claimant always reported his absences by text to his supervisor. The employer never told him this was improper. The employer did not issue the claimant any warnings during his employment.

On August 28, 2017, the claimant reported his absence due to illness to the employer. On August 29, 2017, the employer terminated the claimant for having too many attendance points.

The claimant filed for unemployment insurance benefits with an effective date of August 27, 2017. He went into the hospital on August 30, 2017. He was still in the hospital on September 11, 2017, when he reported his claim for the week ending September 9, 2017. For the week ending September 9, 2017, the claimant reported that he was not able and available for work.

The agency held a fact finding interview on September 20, 2017. The first time the claimant heard about the interview was when the claimant received a voice mail from the fact finder on September 20, 2017. The claimant returned the fact finder's call. The fact finder called the claimant again on September 20, 2017, but the claimant did not receive the call until after 3:00 p.m., the time the fact finder gave the claimant to return the call.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work for the two-week period ending September 9, 2017.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

Iowa Admin. Code r. 871-24.23(23) 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.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. Likewise, when an employee is working, he is considered to be unavailable for work. The claimant was working, ill or in the hospital for work for the two-week period ending September 9, 2017. He is considered to be unavailable for work for the two-week period ending September 9, 2017. The claimant is disqualified from receiving unemployment insurance benefits for the two-week period ending September 9, 2017.

DECISION:

The representative's September 22, 2017, decision (reference 05) is modified in favor of the respondent. The claimant is disqualified from receiving unemployment insurance benefits for work for the two-week period ending September 9, 2017, because he was unavailable for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn