

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CARL W LUDWIG**

Claimant

**APPEAL 20A-UI-01367-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 11/24/19**

**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able and Available

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the February 5, 2020 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits effective January 5, 2020 because he was still employed part-time or working on-call whenever work is available. The parties were properly notified of the hearing. A telephone hearing was held on March 3, 2020. The claimant, Carl W. Ludwig, participated personally. The employer, West Liberty Foods LLC, participated through witness Melissa Stiffler. Employer's Exhibit 1 was admitted into evidence. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant eligible for total or partial unemployment benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time for this employer as a boxer at the employer's food production facility. His job duties require him to place packaged meat in boxes for shipping. The bags of meat weigh approximately 40 pounds. He began working for this employer on August 29, 2016 and remains employed to date. His direct supervisor is Ray Whitfield.

On or about April or May of 2019, claimant suffered an injury at work. He was lifting a box and fell over a pallet. He filed a worker's compensation claim and was treated by the employer's worker's compensation doctor. Following treatment, claimant was fully released to return to work without restrictions in December of 2019.

The employer had a slow-down in production from November through the end of December, 2019. As such, claimant was on a reduced work schedule due to the production slow-down.

Claimant's administrative records establish that he filed his initial claim for unemployment insurance benefits due to the production slow-down and received partial unemployment from November 24, 2019 (his original claim date) through January 4, 2020. As of January 5, 2020, the employer was back to normal production.

On January 6, 2020, claimant presented the employer with work restrictions from his personal medical provider. See Exhibit 1. The work restrictions state "no pushing, pulling, or lifting over 5lbs, no bending at the waist, no twisting at the waist, no bending at the knees, until further evaluation from specialist". See Exhibit 1. Based on claimant's work restrictions provided by his personal medical provider, he was not allowed to return to his job duties because his job duties would violate his restrictions. There is no medical evidence provided by the claimant that his current restrictions involve his previous worker's compensation injury for which he was fully released back to work in December of 2019 without any restrictions. Claimant has worked as a general laborer and as a cook in his past employment.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to work effective January 5, 2020. Benefits are denied effective January 5, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1**, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

(emphasis added).

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, **but able to work in some reasonably suitable, comparable, gainful, full-time endeavor**, other than self-employment, which is generally available in the labor market in which the individual resides.

(emphasis added).

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.

Iowa Admin. Code r. 871-24.23(34) provides:

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

(34) Where the claimant is not able to work due to personal injury.

Effective January 5, 2020, the employer was no longer on a reduced work schedule and claimant was not partially unemployed or temporarily unemployed pursuant to Iowa Code § 96.4(3). As such, effective January 5, 2020, claimant was required to be able to work and available for work. Iowa Code § 96.4(3).

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)).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and

deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibit submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's testimony that his current restrictions stem from his previous 2019 work injury is not credible, in light of the fact that the claimant was released to work without restrictions in December of 2019 and did work without restrictions and earn wages during that time. Claimant's January 6, 2020 medical work excuse listing his current restrictions do not reference any specific type or date of injury. Further, the fact that the claimant was fully-released without restrictions regarding his worker's compensation injury in December of 2019, then, less than a month later the claimant has new, extremely limiting restrictions, is inconsistent with the conclusion that a continued work-related injury existed in January of 2020. The credible evidence establishes that the medical condition claimant continues to suffer from, leading to his current restrictions, is due to a personal injury and not his 2019 work-related injury. See Iowa Admin. Code r. 871-24.23(34). Since claimant is unable to perform his work duties due to a non-work related injury or illness, and the employer is not obligated to accommodate a non-work related injury or illness, the claimant has not established his ability to work or availability for work.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Given the restrictions claimant currently has, the claimant has failed to prove he is able to and available for work in some reasonably suitable, comparable, gainful, full-time endeavor which is generally available in the labor market in which he resides. As such, benefits are denied effective January 5, 2020 and continuing until the claimant establishes his ability to work and availability for work.

**DECISION:**

The February 5, 2020 (reference 02) unemployment insurance decision is reversed. The claimant is not able to work or available for work effective January 5, 2020. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which he is capable of performing given his education, training and work experience, and any medical restrictions.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn