

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACOB GIFFORD

Claimant

APPEAL 20A-UI-02902-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTIVE THERMAL CONCEPTS INC

Employer

OC: 09/22/19

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

On April 7, 2020, Active Thermal Concepts Inc. (employer) filed an appeal from the April 1, 2020 (reference 09) unemployment insurance decision that found Jacob Gifford (claimant) was able to and available for work beginning March 15, 2020.

A telephone hearing was held on May 5, 2020. The parties were properly notified of the hearing. The claimant did not register a number for the hearing and did not participate. Employer participated by Operations Director Matthew Yamilkoski. Official notice was taken of the administrative record.

ISSUES:

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 was injured at work and went on a worker's compensation-related leave of absence in the fall of 2019. Claimant was medically released to return to work on February 20, 2020. Claimant returned to work on February 24, 2020, and worked until his separation from employment on March 10. At that time employer took claimant to a doctor due to a purported ankle injury. The doctor determined there was no actual injury and he was prescribed Tylenol at that time. Employer believes claimant was physically able to work at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the April 1, 2020 (reference 09) unemployment insurance decision that found claimant was able to and available for work beginning March 15, 2020 is **AFFIRMED**. Claimant is eligible for benefits, provided he is meets all other eligibility requirements. 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.

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)).

There is no indication based on the evidence available that claimant was unable to or unavailable for work beginning March 15, 2020. While claimant had suffered an injury in the fall of 2019, he was released to return to work on February 20, 2020, and did work from that time until his separation on March 10, 2020. At that time employer took claimant to a doctor due to a purported ankle injury. However, the doctor determined there was no actual injury and he was only

prescribed Tylenol at that time. Employer believes claimant was physically able to work at that time.

DECISION:

The April 1, 2020 (reference 09) unemployment insurance decision that found claimant was able to and available for work beginning March 15, 2020 is AFFIRMED. Claimant is eligible for benefits, provided he is meets all other eligibility requirements.



Andrew B. Duffelmeyer
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May 6, 2020
Decision Dated and Mailed

abd/scn