

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN A DEN BESTE**

Claimant

**APPEAL NO: 14A-UI-01102-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VENUWORKS OF CEDAR RAPIDS LLC**

Employer

**OC: 12/22/13**

**Claimant: Appellant (4-R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

John A. Den Beste (claimant) appealed a representative's January 27, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits by not being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2014. The claimant participated in the hearing. Nichole Wright appeared on the behalf of Venuworks of Cedar Rapids, L.L.C. (employer) and presented testimony from one other witness, David Kelly. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 20, 2013. He worked as a food and beverage operator at several events. The final event at which he worked was August 25, 2013. He completed the assigned shift on that date. The claimant was not scheduled for work after that date and he concluded that his employment was over because he had completed the assigned work and had not been offered other work. The employer considered the claimant to be only on an "on call" list because he had not sought further work with the employer. There has not been a determination as to what kind of separation has occurred.

The claimant went on to find other employment elsewhere as a part-time restaurant server. After that new employment ended, he established a claim for unemployment insurance benefits effective December 22, 2013.

After establishing his claim for unemployment insurance benefits the claimant became very ill. He had x-rays on January 23, 2014 which showed abnormal results, and on January 24, 2014 he was admitted to the hospital, where he was kept for about five days. He was diagnosed with congestive heart failure. He is scheduled for surgery on March 11 for replacement of a carotid

valve. The claimant believes he might still be able to perform work as a restaurant server, but he is extremely short of breath and he has not demonstrated that at least until after he recovers from his surgery that he could in fact perform the duties of that work to the extent that he had done so in the past.

#### **REASONING AND CONCLUSIONS OF LAW:**

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found 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); 871 IAC 24.22(1). The claimant has not demonstrated that since the week beginning January 19, 2014 that he is actually able to work in some gainful employment. Benefits are allowed prior to that date, if the claimant is otherwise eligible. If the claimant's doctor releases him after his surgery as being able and available to work in some gainful employment, he will again be able and available for work. He can present evidence of being released by his doctor to an Agency representative at a local Agency office, with a request that his status as being able and available for work be re-evaluated.

There appears to have been a separation from employment between the parties on or about August 25, 2013. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

#### **DECISION:**

The representative's January 27, 2014 decision (reference 01) is modified in favor of the claimant. The claimant was able to work and available for work through January 18, 2014. Effective January 19, 2014 the claimant is not able and available for work and not eligible for unemployment insurance benefits, until such time as he is released as able to work by his doctor.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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