

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LAMBERT L SMALLFOOT**  
Claimant

**BRIDGESTONE AMERICAS TIRE**  
Employer

**APPEAL 20A-UI-02223-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/09/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

On March 12, 2020, Lambert Smallfoot (claimant) filed an appeal from the March 10, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits.

A telephone hearing was held on April 27, 2020. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Erik Bair. Bridgestone Americas Tire (employer) did not register a number for the hearing and did not participate.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

**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 worked for employer as a full-time mechanic. Claimant's first day of employment was February 4, 2004. The last day claimant worked on the job was March 26, 2019. Claimant's immediate supervisor was Randy Schaeffer. Claimant separated from employment on February 6, 2020. Claimant was discharged on that date.

Claimant has had work-related injuries to both shoulders, in 2016 and 2017. He underwent surgery on his right shoulder in March 2019. On January 22, 2020, his physician gave him permanent work restrictions. He is restricted from lifting greater than 15 pounds with his right arm and 10 pounds with his left arm. It is recommended he does not perform elevated work. See Exhibits 1 and 2.

Claimant shared these permanent restrictions with employer and a meeting was held on February 6, 2020 with HR representatives to discuss his returning to work. Employer informed claimant it could not or would not accommodate his restrictions and discharged him.

Claimant has extensive experience with mechanical work. He also has experience in welding, operating heavy equipment, driving large vehicles, and inspecting heavy equipment. He is able to work at table level up to shoulder height and to drive and operate vehicles. Claimant is able to and available for work within his restrictions.

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

For the reasons that follow, the March 10, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is **REVERSED**. The administrative law judge concludes that the claimant is able to work and available for work effective 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(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.

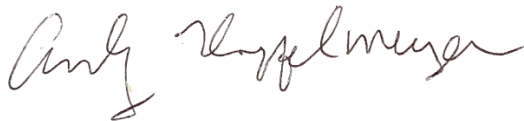
To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by

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)).

Since the employment ended on February 6, 2020, claimant's ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. As noted above, claimant has extensive experience with mechanical work. He also has experience in welding, operating heavy equipment, driving large vehicles, and inspecting heavy equipment. He is able to work at table level up to shoulder height and to drive and operate vehicles. Thus the claimant is considered able to and available for work with the benefit week ending February 15, 2020, the first full week he was separated from his employment and able to perform other work.

**DECISION:**

The March 10, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. The administrative law judge concludes that the claimant is able to work and available for work effective the week ending February 15, 2020. Benefits are allowed, provided claimant is otherwise eligible.



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Andrew B. Duffelmeyer  
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April 29, 2020  
Decision Dated and Mailed

abd/scn