

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J JAKUBOWSKY
Claimant

APPEAL NO. 19A-UI-04602-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACRO MANUFACTURING CORP
Employer

OC: 05/12/19
Claimant: Appellant (4R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Robert Jakubowsky filed a timely appeal from the May 31, 2019, reference 03, decision that denied benefits effective May 12, 2019, based on the deputy's conclusion that Mr. Jakubowsky was unable able to perform work due to injury. After due notice was issued, a hearing was held on June 21, 2019. Mr. Jakubowsky participated. David Robinson represented the employer and presented additional testimony through Kurt Packingham. Exhibits A and B were received into evidence. The administrative law judge took official notice of the May 31, 2019, reference 01, decision. The administrative law judge took official notice of the database readout (DBRO) and of the continued claims record (KCCO).

Mr. Jakubowsky submitted two documents on June 24, 2019 regarding the June 21, 2019 appeal hearing. The administrative law judge concludes there is good cause to reopen the record for the purpose of receiving each document into evidence. The job search document is received into evidence as Exhibit C. The June 14, 2019 medical note is received into evidence as Exhibit D. The Appeals Bureau will mail both documents to the employer.

ISSUES:

Whether Mr. Jakubowsky has been able to work and available for work since he established his original claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Jakubowsky established an original claim for benefits that was effective May 12, 2019. Iowa Workforce Development set Mr. Jakubowsky's weekly benefit amount at \$467.00. The Agency has not disbursed benefits in connection with the claim. After Mr. Jakubowsky established his original claim, he made weekly unemployment insurance claims. For the week that ended May 18, 2019, Mr. Jakubowsky reported that he had been discharged, that he was able to work and available for work, that he had not refused any offers of work, that he had made zero employer contacts, and that he had \$300.00 in wages. For each of the four weeks between May 19, 2019 through June 15, 2019, Mr. Jakubowsky reported that he was not working, that he

was able to work and available for work, that he had not refused any offers of work, that he had made two employer contacts, and that he had no wages to report.

At the time Mr. Jakubowsky established his claim for benefits, his most recent employer was Acro Manufacturing Corporation. On May 31, 2019, an Iowa Workforce Development Benefits Bureau deputy entered a reference 01 decision that allowed benefits to Mr. Jakubowsky provided he was otherwise eligible and that held the employer account of Acro Manufacturing Corporation could be charged for benefits, based on the deputy's conclusion that Mr. Jakubowsky was discharged on May 16, 2019 for no disqualifying reason. The employer did not appeal the May 31, 2019, reference 01, decision and it became a final agency decision.

Mr. Jakubowsky had worked for Acro Manufacturing as a full-time CNC machine operator for over a decade. During the last few years of the employment, Mr. Jakubowsky was assigned to the first shift. The employment ended after Mr. Jakubowsky sought medical evaluation and treatment on April 30, 2019 for a repetitive use injury to his right hand and wrist. Mr. Jakubowsky is right-handed. Mr. Jakubowsky returned to work with a medical restriction against right hand forceful grip and repetitive grip and with a 10-pound lifting restriction applicable to his right hand. Before the employment separation, the lifting restriction was modified to 20-pounds. Mr. Jakubowsky was willing to perform work within his restrictions, but the employer elected not to continue to provide work to Mr. Jakubowsky. At the time of the separation, Mr. Jakubowsky had not received a formal diagnosis of his hand and wrist ailment.

Mr. Jakubowsky's work restrictions remained unchanged from the time he separated from the Acro Manufacturing until June 14, 2019, when he was diagnosed with severe carpal tunnel syndrome in his right hand/wrist. Mr. Jakubowsky has provided a June 14, 2019 medical documentation that provides the diagnosis and that releases him to perform work with no restrictions pending his consultation with the surgeon.

During the week that ended May 18, 2019, the week Mr. Jakubowsky was discharged, Mr. Jakubowsky was available for work with the employer, but did not otherwise engage in a work search. After Mr. Jakubowsky was discharged, he made contact with the Cedar Rapids Workforce Development Center and engaged in a discussion regarding whether he should be considered disabled due to his hand and wrist condition.

During the week that ended May 25, 2019, Mr. Jakubowsky applied for work with Earl May. That employer contact ended when Mr. Jakubowsky learned the work would involve planting trees, something he was unable to perform with his medical restrictions. Mr. Jakubowsky contacted a former employer to let that employer know that he was available for work.

During the week that ended June 1, 2019, Mr. Jakubowsky applied for a part-time groundskeeper position at a golf country club that adjoins his home. Mr. Jakubowsky also applied for a taxi driving position.

During the week that ended June 8, 2019, Mr. Jakubowsky applied for a job as a counter attendant at an auto parts retail store and for work at the Cedar Valley Humane Society.

During the week that ended June 15, 2019, Mr. Jakubowsky applied for a cook/prep cook job and one or more bartending jobs.

As of Friday afternoon, June 21, 2019, Mr. Jakubowsky had not yet applied for work during the week of June 16-22, 2019. Mr. Jakubowsky said his reason for not applying for work up to that

late point in that week was that the prospective employers he had spoken to in earlier weeks declined to employ him due to his upcoming surgery.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Where the claimant is not able to work due to personal injury, the claimant does not meet the ability to work requirement in Iowa Code section 96.4(3). Iowa Administrative Code rule 871-24.23(34).

Mr. Jakubowsky was able to perform work within his medical restrictions during the benefit week that ended May 18, 2019 and was available for work with the employer for that week until the employer discharged him from the employment. Mr. Jakubowsky is eligible for benefits for the week that ended June 18, 2019, provided he is otherwise eligible.

Mr. Jakubowsky continued to be able to perform work within his medical restrictions and available for work within his medical restrictions during the period of May 19, 2019 through the benefit week that ended June 15, 2019. It was toward the end of that week that Mr. Jakubowsky received his diagnosis and was released by his doctor to return to work without restrictions pending his surgical consultation. Mr. Jakubowsky is eligible for benefits for the four-week period of May 19, 2019 through June 15, 2019, provided he meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for determination of whether Mr. Jakubowsky was available for work since June 16, 2019 and whether he has continued to be able to work.

DECISION:

The May 31, 2019, reference 03, is modified as follows. The claimant was able to work and available for work during the period of May 12, 2019 through June 15, 2019 and is eligible for benefits for that period provided he meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been available for work since June 16, 2019 and whether he has continued to be able to work since that time.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn