

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HAROLD F MARTIN
Claimant

V H WILLIS COMPANY LLC
Employer

APPEAL 17A-UI-01248-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/17
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the January 30, 2017 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 23, 2017. The claimant, Harold F. Martin, participated personally. The employer, V.H. Willis Company LLC, participated through witness Debra Elliott.

ISSUE:

Is the claimant able to work and available for work effective January 1, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time for this employer from September 21, 1998 until December 27, 2016. He is no longer employed with this employer.

On November 3, 2016 claimant was hospitalized for a non-work related injury. He was unable to work until he was released from his physician to work on December 27, 2016. Claimant was released on that date with no restrictions. Claimant is able to and available for work. Claimant has made active work searches.

There has not been an initial investigation and determination with regard to the claimant's separation from employment by the Benefits Bureau of Iowa Workforce Development. This matter shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with regard to claimant's separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective January 1, 2017.

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".

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)).

Claimant's treating physician has released the claimant to return to work without restriction. Claimant has established that he is able to and available for work.

DECISION:

The January 30, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant is able to and available for work. Benefits are allowed, provided he is otherwise eligible.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/