

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JAMES E BATES**  
Claimant

**OAKDALE MEMORIAL GARDENS INC**  
Employer

**APPEAL 15A-UI-05399-H2T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/16/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 1, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2015. Claimant participated. Employer did not participate.

**ISSUE:**

Was 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 is employed full time as a grounds keeper. He had a non-work related foot injury and was placed on part-time duty by his doctor then was taken off work completely by his doctor while he healed. The claimant was placed on part-time work as of April 4, 2015.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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.

The claimant was not allowed to work part-time beginning on April 5, and then was off work completely due to a non-work related injury or illness to his foot. He is not able to and available for work effective April 5, 2015. Accordingly, benefits are denied.

**DECISION:**

The May 1, 2015 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective April 5, 2015. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs