

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J MILLER
Claimant

APPEAL NO. 11A-UI-02681-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTON VETERINARY CLINIC PC
Employer

OC: 01/23/11
Claimant: Respondent (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 25, 2011, reference 01, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on March 29, 2011. Claimant participated personally. Employer participated by Jerry Katzer, president.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant works as a part-time veterinary helper. Work slows in the winter months for this large farm animal practice. Claimant, during peak periods, receives 40 hours per week, but in the winter months often receives only five hours per week. Claimant in January was cut back to just a few hours per week due to the seasonal slowdown. Claimant had one day that he was not available on February 14, 2011, due to a family member's medical issues. Claimant is able and available for full-time work during all times in question.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Benefits shall be allowed effective January 23, 2011. Claimant is on a temporary seasonal layoff. Claimant is able and available for full-time work. Claimant was off for one day due to a family medical issue. The one day off does not make claimant ineligible for the entire week.

DECISION:

The decision of the representative dated February 25, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective January 23, 2011, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw