

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEREK WOLLESEN
Claimant

CJS CONTRACTORS INC
Employer

APPEAL 21A-UI-23758-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/19/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Derek Wollesen, filed an appeal from the October 20, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the conclusion he was not able to and available for work effective September 19, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on December 15, 2021. The claimant participated personally and testified. The employer was represented by Office Manager Shelley Selvage. Official notice was given of the administrative.

ISSUE:

Was the claimant able to work and available for work effective September 19, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant stated working as a full-time journeyman plumber for the employer, CJS Contractors Inc, on October 26, 2020. His rate of pay was \$30 per hour.

The employer had a Covid19 mitigation practice in place. It required employees who test positive for Covid19 to quarantine for 14 days.

The claimant tested positive for Covid19 on September 17, 2021. He experienced an itchy throat, a headache and body aches concurrent with his positive diagnosis. The claimant's physician said he should quarantine for 14 days after the date of his positive diagnosis. The claimant used 16 hours of paid time off during his quarantine. The claimant was bedridden during most of his quarantine.

On October 4, 2021, the claimant returned to work despite experiencing the symptoms of shortness of breath and lightheadedness. Work would have been provided to him if he had not had a positive Covid19 diagnosis.

The administrative record KCCO shows the claimant made weekly claims for the weeks ending September 25, 2021 and October 2, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective September 19, 2021.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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:

Benefit 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 provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

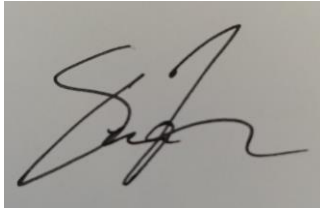
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant made weekly claims for the weeks ending September 25, 2021 and October 2, 2021. The claimant testified he was too ill to work during this period and so he is disqualified under Iowa Admin. Code r. 871-24.23(1). He also testified he was restricted from working by his physician during this period and as such he is disqualified under Iowa Admin. Code r. 871-24.23 (35). Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The October 20, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective September 19, 2021. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

January 20, 2022

Decision Dated and Mailed

smn/abd

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.