

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D WOHLERT
Claimant

APPEAL NO. 08A-UI-02671-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/27/08 R: 01
Claimant: Appellant (2)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Larry Wohlert filed a timely appeal from the March 12, 2008, reference 03, decision that denied benefits effective January 27, 2008 based on a conclusion that Mr. Wohlert was not able to work. After due notice was issued, a hearing was held on April 2, 2008. Mr. Wohlert participated. The administrative law judge took official notice of the documents submitted for, or generated in connection with, the fact-finding interview that occurred on February 27, 2008. The administrative law judge took official notice of Department Exhibit D-1, a Request for Medical Report previously submitted by Mr. Wohlert and completed by Mr. Wohlert's doctor. The evidentiary record was left open until April 14, 2008, so that Mr. Wohlert could provide medical documentation concerning follow-up medical evaluation/treatment. Mr. Wohlert provided additional documentation, which the administrative law judge received into the record as Exhibit A.

ISSUE:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Larry Wohlert established a claim for unemployment insurance benefits that was effective January 27, 2008. During December 2007 and January 2008, Mr. Wohlert was under the care of Dr. B Feldman, M.D. An Iowa Workforce Development representative requested that Mr. Wohlert have Dr. Feldman submit a medical report regarding Mr. Wohlert's ability to perform work. Mr. Wohlert and/or his doctor submitted medical report information to Iowa Workforce Development. The medical report indicated diagnoses of anemia, peptic ulcer disease, and esophagitis. The medical report indicated that Mr. Wohlert was hospitalized and unable to work during the period of December 30, 2007 through January 3, 2008. In the space provided for further explanation of any condition that would have prevented Mr. Wohlert from working, Dr. Feldman indicated that he had last seen Mr. Wohlert for a follow up visit on January 14, 2008. Dr. Feldman indicated that Mr. Wohlert "was then going to continue with care with the VA

in Sioux Falls.” Dr. Feldman indicated that Mr. Wohlert would “need to contact the VA for further disability” and that Dr. Feldman was no longer following Mr. Wohlert. One area of the medical report form asked the following question:

If the individual has been released, are there any restrictions, such as environmental conditions, weight lifting factors, or general restrictions that would prevent the individual from returning to the former occupation? WHAT ARE THESE RESTRICTIONS?

Dr. Feldman provided a one-word response, “NO.” The response left unclear whether the “NO” meant that Mr. Wohlert could not return to work at all and, therefore, restrictions are not applicable, or whether Mr. Wohlert could return to work without restrictions.

Additional medical documentation provided by Mr. Wohlert indicates no condition that would prevent Mr. Wohlert from being physically able to work or available for work since the effective date of his claim.

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, (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.

(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.

(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.

The evidence in the record establishes that Mr. Wohlert has been able to work since January 27, 2008, the effective date of his claim for unemployment insurance benefits. The evidence indicates that Mr. Wohlert has otherwise met the requirements of Iowa Code section 96.4(3). Mr. Wohlert is eligible for benefits effective January 27, 2008, provided he is otherwise eligible.

In the event that Mr. Wohlert commences, or has commenced, new full-time employment, Mr. Wohlert would no longer be available for other work or work referrals and, therefore, would no longer be eligible for unemployment insurance benefits.

DECISION:

The Agency representative's March 12, 2008, reference 03 is reversed. The claimant has been able and available for work since establishing his claim for benefits. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs