

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN A RUPP
Claimant

APPEAL NO. 06A-UI-11731-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATIONS DATA SERVICE INC
Employer

OC: 10-29-06 R: 01
Claimant: Appellant (2-R)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 30, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 21, 2006. Claimant participated. Employer participated through Kristen Hansen and Kim Robinson.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time customer service representative (CSR) from October 31, 2005 until December 8, 2006, when he was discharged. His last day of work was October 13, 2006, when employer removed him from work pending a medical evaluation. Employer had moved claimant from a job in which it successfully accommodated his medical condition and Dr. Goldner faxed a fitness for duty report to employer on August 23, 2006. Claimant was told to go to a neurologist by November 17 and report back to employer. He was unable to get an appointment until November 27 and then called employer to advise it he had signed a permission form for employer to communicate with the neurologist, Dr. Eggers, who prescribed different medications and found claimant fit to work. Employer fired claimant for failing to call on November 17. He had no prior warnings or written deadlines for doing so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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".

871 IAC 24.22(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.

(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.

At no time did a treating medical professional opine that claimant was unable to work; and since employer initiated removing claimant from work because it changed his job and employer's opinion does not constitute a credible medical opinion, claimant has no medical restriction or other limitation on his employability as of his claim date effective October 29, 2006. Accordingly, benefits are allowed.

DECISION:

The November 30, 2006, reference 01, decision is reversed. The claimant is able to work and available for work effective October 29, 2006. Benefits are allowed.

REMAND:

The separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw