

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVON C BAUMGARTNER
Claimant

APPEAL 18A-UI-09327-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATERIAL MANAGEMENT GROUP INC
Employer

OC: 08/12/18
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available to Work
Iowa Admin Code r. 871-24.22 – Benefit Eligibility Conditions

STATEMENT OF THE CASE:

Devon Baumgartner, Claimant, filed an appeal from the August 31, 2018, (reference 03) unemployment insurance decision that denied benefits because claimant was not able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on September 25, 2018 at 3:00 p.m. Claimant participated. Employer participated through Lisa Nieman, Benefits Administrator, and David Peverill, Warehouse Manager. Official notice was taken of the fact finding documents. The record remained open until 4:30 p.m. on September 26, 2018, so claimant could submit his physician's statement. Claimant submitted the physician's statement before the record closed. Employer was provided with a copy of the physician's statement. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant was able to and available for work.

FINDINGS OF FACT:

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

Claimant was released by his physician to return to work on August 27, 2018 with no restrictions. (Exhibit A) Claimant has been looking for a job since his employment with Material Management Group, Inc. ended on August 16, 2018. (Claimant Testimony) Claimant has applied for jobs for which he is qualified and meets the educational requirements. (Claimant Testimony) Claimant would be able to perform the duties of the jobs for which he is applying. (Claimant Testimony) Claimant has remained in the area since August 12, 2018. (Claimant Testimony) Claimant has transportation for work. (Claimant Testimony) Prior to August 27, 2018, claimant's physician did not release him for work, even with restrictions. (Claimant Testimony)

The Unemployment Insurance Decision issued on August 31, 2018 found that claimant was not able to perform work at that time and denied benefits as of August 12, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available for work as of August 27, 2018. Benefits are approved from that date provided claimant is otherwise eligible.

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 . . . [t]he individual is able to work, is available for work, and is earnestly and actively seeking work."

Iowa Admin. Code r. 871-24.22(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.

(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 claimant has the burden of proof to establish his or her ability to and availability for work. *Davoren v. Iowa Emp't Sec. Comm'n*, 277 N.W.2d 602 (Iowa 1979). To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

Claimant established that he has been available for work since August 16, 2018. Claimant has remained in the Waterloo, Iowa area, where he resides. Claimant has transportation to and from work. Claimant has not had a family illness or hospitalization that would have prevented him from working since August 16, 2018. While claimant was available to work since August 16, 2018, he has only been able to work since August 27, 2018, when his physician released him to return to work without restrictions. Claimant has sought employment since August 16, 2018; claimant has applied for jobs with Target Distribution and John Deere. (Claimant Testimony) Claimant is qualified for and able to perform the duties of the jobs for

which he is applying. The claimant has been able to and available for work since August 27, 2018.

DECISION:

The August 31, 2018, (reference 03) unemployment insurance decision is modified in favor of the claimant. The claimant was not able to and available for work from the week of August 12, 2018 until August 27, 2018. The claimant is able to and available for work as of August 27, 2018. Benefits are allowed as of August 27, 2018 if claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs