

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS W FRANZEN
Claimant

INFASTECH DECORAH LLC
Employer

APPEAL 18A-UI-02684-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/21/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 19, 2018, (reference 02) unemployment insurance decision that denied benefits based upon claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on March 27, 2018. Claimant participated personally and was represented by attorney Erik Fern. Employer participated through human resources manager Alice Bjergum and director of labor and employee relations Becky Beamish. Employer's Exhibits 1 through 5 were received.

ISSUE:

Is the claimant able to work and available for work effective January 21, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is currently employed by employer. Claimant last worked as a full-time parts washer and special oiling. Claimant's last day of physical work was July 27, 2017. That day, claimant fainted at work and hit his head on a water pipe. Claimant applied for short term disability benefits and his application was approved. Claimant was out on voluntary medical leave until the end of September 2017.

On September 26, 2017, claimant obtained a release to return to work from claimant's medical care provider, Chaithanya Bhaskar, MD. On September 27, 2017, claimant obtained a release to return to work with no restrictions from claimant's cardiologist, Raju Ailiani, MD. On October 3, 2017, claimant obtained a release to return to work from a neurological perspective from claimant's medical care provider, Mary Goodsett, MD. Claimant presented these notes to employer, but employer would not allow claimant to return to work.

Employer sent claimant to Winneshiek Medical Center Occupational Health Department for an evaluation. Claimant underwent a Return to Work screen and passed it. Claimant was evaluated by Kristen Heffern, ARNP. Heffern noted:

It is expected that Dennis will be able to do the Parts Washer position, due to the fact that he did this job before he had the syncopal event and did not have any "physical" change in his status following the head laceration and syncopal episode.

Heffern then went on to note her concerns with claimant's physical agility and risk for injury. In conclusion, Heffern noted:

At this point, it appears that Dennis is able to perform the essential functions of his job. However, I would say that he is at risk for injury due to some of his physical deficits. Thus, I feel Dennis is able to return to his regular job duties.

The report was provided to employer. However, employer would not allow claimant to return to work.

Claimant had a mechanical heart valve put in 22 years ago. Claimant takes blood thinner as a result. In November 2017, claimant was hospitalized for one week because his blood got too thin. Thus, claimant's medical provider issued a note stating claimant could return to work effective December 6, 2017, if he had sitting breaks when needed and no overtime. Claimant provided the note to employer, but employer would not allow him to return to work. Employer could have accommodated the request for sitting breaks when needed, but considers working overtime an essential function of the job. The note was also provided to the short term disability insurance carrier, who then found claimant ineligible for further benefits as he was able to return to work.

Claimant filed a claim for unemployment insurance benefits effective January 21, 2018.

On February 20, 2018, claimant's primary care provider released him to return to work with no restrictions. Claimant gave this note to employer, who now plans to send him to Occupational Health for another appointment.

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 effective January 21, 2018.

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".

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.

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). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.* Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Some employees with restrictions will be disabled and thus protected by the Iowa Civil Rights Act and the American's with Disabilities Act. Although disabled these employees may still be "able and available" if reasonable accommodation by employers would make them so. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993). The employee is not automatically be deemed to be unduly restricted from employment under Iowa Admin. Code r. 871-24.22(2)m.

In this case, claimant has established he is able to work effective January 21, 2018, with the reasonable accommodations of sitting breaks as needed and no overtime. Employer admitted it could have accommodated the request for sitting breaks as needed. It failed to establish working overtime is an essential function of claimant's job and/or that accommodating that restriction would have presented it with an undue hardship. As of February 20, 2018, claimant has no medical restrictions and has likewise established his ability to work for purposes of unemployment law. Benefits are allowed effective January 21, 2018.

DECISION:

The February 19, 2018, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective January 21, 2018. Benefits are allowed, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn