

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES F FUQUA
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO. 15A-UI-13768-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (4)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 8, 2015 (reference 02) which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 7, 2016. Claimant participated personally.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was separated from his most recent employment with Lowe's on or about July 17, 2015. Since that date claimant has been pursuing other employment and filling out applications in person and online.

On November 11, 2015, claimant had surgery on his right to address a detached retina. Claimant had already lost 25 percent of his vision in his left eye and had trouble seeing straight ahead items. After surgery claimant had double vision and was told by his doctor not to drive until his double vision cleared. From November 11, 2015 through November 17, 2015, claimant mostly rested to get his vision back the best he could. Claimant stated that he had a neighbor help him fill out a couple online applications but he would have been unable to work during this time period.

REASONING AND CONCLUSIONS OF LAW:

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".

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. 871-24.23(35) provides:

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

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

Inasmuch as the surgery created a situation where claimant was unable to work for a period of time, benefits are withheld for that period of time when claimant was not able and available for work. Benefits shall be withheld for the period between November 11, 2015 and November 17, 2015. Benefits shall be allowed effective November 18, 2015.

DECISION:

The decision of the representative dated December 8, 2015 (reference 02) is modified. Claimant is not eligible to receive unemployment insurance benefits for the period between November 11, 2015 and November 17, 2015. Benefits shall be allowed effective November 18, 2015, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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