

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AHMED A HODOL**  
Claimant

**APPEAL NO. 17A-UI-06498-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 03/19/17**  
**Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Ahmed Hodol filed a timely appeal from the June 22, 2017, reference 02, decision that denied benefits effective March 19, 2017, based on the claims deputy's conclusion that Mr. Hodol was unduly restricting his availability for work. After due notice was issued, a hearing was held on July 20, 2017. Mr. Hodol participated personally and was represented by attorney Megan Flynn. The employer did not register a telephone number for the hearing and did not participate in the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the administrative law judge decision in Appeal Number 17A-UI-04192-LJ-T and the Employment Appeal Board decision in Hearing Number 17BUI-04192. The administrative law judge left the hearing record open until 11:59 p.m. on July 24, 2017 for the limited purpose of allowing Mr. Hodol to submit medical records pertaining to the April 14, 2017 and July 10, 2017 medical appointments and to submit proof of his job search activities. Mr. Hodol submitted four exhibits that were received into evidence as Exhibits B through E.

**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: Ahmed Hodol established a claim for unemployment insurance benefits that was effective March 19, 2017. Mr. Hodol is a native Somali speaker and immigrant. Mr. Hodol has limited ability to communicate in spoken English and even more limited ability to read and write English. Since Mr. Hodol established his claim for benefits, he has made weekly unemployment insurance benefit claims. Mr. Hodol received initial guidance from a Workforce Development represent to learn how to submit his weekly claims, but thereafter submitted his weekly claim reports online.

Mr. Hodol was most recently employed by Agri Star Meat & Poultry, L.L.C. as a full-time general laborer from 2013 until March 15, 2017, when the employer discharged him for attendance. Mr. Hodol worked in packaging until October 2016, when Mr. Hodol suffered a fractured left patella, kneecap, in the course of performing his work duties at Agri Star. Mr. Hodol eventually

returned to work with restrictions and performed laundry work. On March 13, 2017, Dr. Russell Norris, M.D., an orthopedic specialist, released Mr. Hodol to return to full-time work with restrictions. Agri Star ended the employment two days later, in response to Mr. Hodol's early departures from work on nine occasions between January 30 and March 14, 2017 due to knee pain. Mr. Hodol left work early due to knee pain on January 30, February 6, February 9, 12, 14, and 20, and on March 1, 8 and 14, 2017.

On May 25, 2017, a Workforce Development administrative law judge entered a decision that held Mr. Hodol was discharged for no disqualifying reason. See Appeal Number 17A-UI-04192-LJ-T. The Employment Appeal Board subsequently affirmed the administrative law judge's decision. See Hearing Number 17BUI-04192.

Mr. Hodol has provided a Physician's Status Report, completed by Dr. Norris and dated March 13, 2017. The form indicates that Mr. Hodol was released to return to full-time employment effective March 13, 2017 with restrictions that were to remain in effect until a recheck appointment tentatively set for May 1, 2017. The surgeon released Mr. Hodol to duties involving continuous sitting and/or standing. The surgeon restricted Mr. Hodol from crawling, from climbing higher than six feet, and from lifting or carrying more than 25 pounds. The surgeon directed that Mr. Hodol take a 20 to 30-minute rest break in connection with every four hours worked. The surgeon restricted Mr. Hodol to rare (1 to 5 percent of his work day) squatting and/or climbing. The surgeon restricted Mr. Hodol to frequent (34 to 66 percent of his work day) walking, bending, twisting and/or driving.

Mr. Hodol returned to Dr. Norris for a follow up medical appointment on April 14, 2017. Mr. Hodol had provided Dr. Norris' progress note from that appointment. The surgeon noted that Mr. Hodol complained of "activity limiting left knee pain." The surgeon ordered an MRI scan that "showed some residual edema in the patella, but no significant ligamentous, chondral or articular injury." The surgeon further noted the following:

Patient is at maximum medical improvement from an orthopedic standpoint. I have encouraged him to continue activities as tolerated. I offered him release of records for 2nd opinion at his discretion. He will follow up on an as-needed basis only.

The surgeon further noted that Mr. Hodol had a permanent partial impairment rating of 6 percent of his left lower extremity.

In connection with the April 14, 2017 appointment, Dr. Norris also prepared a Physician's Status Report that included a diagnosis of left knee pain, but that released Mr. Hodol to return to work without restrictions effective April 14, 2017 and discharged him from care.

On July 10, 2017, Mr. Hodol was evaluated by a different physician on July 10, 2017 for a second opinion as part of the pending worker's compensation matter. Mr. Hodol asserts that he is currently doing fine, with no problems.

Mr. Hodol has at all relevant times resided in Postville. Mr. Hodol has a car and a valid driver's license. Mr. Hodol has looked for employment in Postville, in Luana, and in Minneapolis, Minnesota. Because Mr. Hodol does not speak English, he has looked primarily for production work.

While Mr. Hodol asserts that he began his work search for new employment upon establishing the March 19, 2017, original claim for benefits, Mr. Hodol produced very limited evidence of a

work search, despite asserting that he had such documentation at home and despite being given four days following the appeal hearing to produce such evidence.

During the benefit week that ended March 25, 2017, Mr. Hodol applied for employment at Dollar General in Postville.

During the benefit week that ended April 1 2017, Mr. Hodol applied for employment with an ice cream manufacturer.

During the benefit week that ended April 8, 2017, Mr. Hodol applied for a cashiering job at Quillin's, a grocery store in Postville.

During the benefit week that ended June 24, 2017, Mr. Hodol applied for work at a halal store in Minneapolis and for a production job in Minneapolis.

During the benefit week that ended July 8, 2017, Mr. Hodol returned to Quillin's and again applied for a cashiering job.

During the benefit week that ended July 15, 2017, Mr. Hodol applied for work at a halal store in Postville.

#### **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".

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. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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.

The weight of the evidence in the record establishes that Mr. Hodol was unable to perform full-time work prior to April 14, 2017, when Dr. Norris released him to return to work without restrictions, but with swelling on his knee and a six percent lower extremity impairment rating. Mr. Hodol was not performing full-time work for Agri Star at the time he separated from that company. At the time of the April 14, 2017 medical appointment, Mr. Hodol complained of "activity limiting left knee pain." This was after Mr. Hodol had been off work for about a month. On April 14, 2017, Dr. Norris released Mr. Hodol to return to work without restrictions despite Mr. Hodol's continued complaint of knee pain. Mr. Hodol was still being evaluated for knee pain as recently as July 10, 2017. In light of the April 14, 2017 medical release to return to full-time work without restrictions, the administrative law concludes that Mr. Hodol became able to perform full-time work effective April 14, 2017.

The weight of the evidence indicates that Mr. Hodol has only been available for work within the meaning of the law during one benefit week. That one week was the benefit week that ended June 24, 2017, during which Mr. Hodol applied for two jobs in Minneapolis. Mr. Hodol has

presented insufficient evidence to establish that he was available for full-time work or that he was engaged in an active and earnest search for new full-time employment during any other week of the claim. The administrative law judge agrees with Mr. Hodol that production positions present the best path forward for him. Mr. Hodol lacked the minimal skillset necessary to perform three of the jobs for which he applied. These were the two cashiering jobs at Quillin's and the similar position at Dollar General.

Benefits are denied for the benefit weeks between March 19, 2017 and June 17, 2017. Benefits are allowed for the benefit week that ended June 24, 2017, provided Mr. Hodol meets all other eligibility requirements. Benefits are again denied effective June 24, 2017. The availability and work search disqualification continued as of the July 21, 2017 appeal hearing. To be eligible for benefits for period beginning July 23, 2017, Mr. Hodol must demonstrate an active and earnest search for full-time employment, demonstrate availability for full-time employment, document his work search, and be prepared to present his work search records to a Workforce Development record upon request. Mr. Hodol must meet all other eligibility requirements.

**DECISION:**

The June 22, 2017, reference 02 is modified as follows. The claimant was unable to perform full-time work prior to April 14, 2017. The claimant has been able to perform full-time work since April 14, 2017. The claimant demonstrated an active and earnest search for work, and availability for full-time work, during the benefit week that ended June 24, 2017 and is eligible for benefits for that week, provided he meets all other eligibility requirements. The claimant is not eligible for benefits for the benefit weeks between March 19, 2017 and April 15, 2017 due to the work ability issue and because he did not demonstrate an active and earnest search for work, and availability for full-time, work during those benefit weeks. The claimant is not eligible for benefits for the benefit weeks between June 25, 2017 and July 22, 2017, because he did not demonstrate an active and earnest search for work, and availability for full-time work, during those benefit weeks. To be eligible for benefits for period beginning July 23, 2017, the claimant must demonstrate an active and earnest search for full-time employment, demonstrate availability for full-time employment, document his work search, and be prepared to present his work search records to a Workforce Development record upon request. The claimant must meet all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs