

## UNEMPLOYMENT INSURANCE APPEALS

**REED R THOMPSON**  
Claimant

**3M COMPANY**  
Employer

**APPEAL NO. 16A-UI-13841-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/16/16**  
**Claimant: Appellant (2R)**

Iowa Code § 96.4-3 – Able and Available

### **STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 19, 2016 reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 19, 2017. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibits A and B were admitted into evidence.

### **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 had been off work since June 23, 2016 with bulging discs in his back. Employer asked claimant to bring in a letter from his doctor by November 28, 2016 or claimant would be considered to have resigned. (Claimant Exhibit A). Claimant forwarded a letter prepared by his doctor on November 23, 2016. Said letter stated that claimant was cleared to return to work on November 29, 2016. (Claimant Exhibit B). The only restriction stated that claimant was to have frequent rotation of job duties. Claimant's job normally had a rotation of job duties every four hours, so this was not a hindrance.

Employer did not accept claimant back to work after claimant forwarded the doctor's release, and terminated claimant on December 2, 2016.

### **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.

Inasmuch as the injury was not work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective November 29, 2016.

**DECISION:**

The decision of the representative dated December 19, 2016, reference 03 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective November 29, 2016, provided claimant meets all other eligibility requirements. This matter is remanded to the fact finder to make further determination as to the nature of the job separation.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/rvs