

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALFONSO E MORALES
Claimant

APPEAL 16A-UI-07993-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/19/16
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 July 12, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work and available for work effective June 19, 2016. The parties were properly notified of the hearing. A telephone hearing was held on August 9, 2016. The claimant, Alfonso E. Morales, participated, and attorney Samuel J. Aden represented the claimant. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 10, 2016, claimant sustained a lower back injury while working for Winnebago Industries in Forest City, Iowa. At the time claimant was injured, he was able to work provided he not lift more than fifteen pounds. In June 2016, claimant was discharged from this employer.

Immediately after claimant was discharged, he began looking for work and making his necessary two job contacts per week. Claimant applied for driving jobs and customer service jobs. Claimant worked as a delivery driver from 2008 to 2010. He also has "a little bit" of customer service experience.

Claimant returned to the doctor on July 26, 2016, and he received a twenty-pound lifting restriction. Claimant continues to look for a driver job, a desk job, or something in production that does not require heavy lifting. Claimant has been making his two job contacts per week, and he has been actively searching for work since he was discharged.

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 June 19, 2016.

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.

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.*

In this case, claimant was able to work and available for work immediately upon his separation from his former employer. Claimant credibly testified that he has experience with sedentary work and delivery driving. Since he has performed sedentary and delivery jobs in the past, he is considered able to work even if he cannot yet return to a job requiring heavy lifting. Claimant began searching for customer service and delivery driving work immediately upon his separation from his former employer. Thus the claimant is considered as able to work and available for work as of June 19, 2016. Benefits are allowed.

DECISION:

The July 12, 2016, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective June 19, 2016. Benefits are allowed, provided he is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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