

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVID L VOSDINGH**  
Claimant

**APPEAL 21A-UI-18017-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/07/21  
Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On August 16, 2021, the claimant/appellant filed an appeal from the August 9, 2021, (reference 04) unemployment insurance decision that disallowed benefits based on claimant not being able to perform work due to illness as of June 20, 2021. The parties were properly notified about the hearing. A telephone hearing was held on October 8, 2021. This hearing was held in conjunction with appeal 21A-UI-18016-CS-T. Claimant participated at the hearing.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending June 26, 2021?

**FINDINGS OF FACT:**

Claimant had open heart surgery on June 17, 2021. Claimant was in the hospital for a week and then was not able to work because he was recovering from the surgery. Claimant had a subsequent surgery on August 23, 2021. Claimant testified that he was not available to work from June 17, 2021 and resumed searching for work on September 21, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work, and did not make an earnest search for work. Benefits are denied beginning June 20, 2021 through September 20, 2021.

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:

Benefit 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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant testified that he had open heart surgery and that he was in the hospital for a period of time and then he was recovering from his surgery and he was not able to work. Claimant testified that he had a subsequent surgery on August 23, 2021, and did not start applying for jobs again until September 21, 2021. The claimant argued that he should be entitled to benefits during this time period. However, the court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl. Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)). Claimant did not meet his burden of proof and he is not considered able to work and available for work. Accordingly, benefits are denied for the time period of June 20, 2021 through September 20, 2021.

**DECISION:**

The August 9, 2021, (reference 04) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective June 20, 2021 through September 20, 2021. Benefits are denied.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

October 13, 2021  
Decision Dated and Mailed

cs/mh

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.