

UNEMPLOYMENT INSURANCE APPEALS

GARY D MORTIMER
Claimant

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

APPEAL NO. 16A-UI-13579-B2T

ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/27/16
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 15, 2016 reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 17, 2017. Claimant participated personally and with witness Michelle Mortimer. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibit A was 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 was laid off by his former employer, Keokuk Steel Castings, on or around March 11, 2016 when the manufacturer closed down.

Claimant was initially thought to have a hernia on or around the middle of September, 2016. Near the same time, claimant stopped attending IWD classes. Claimant visited a surgical doctor on September 29, 2016 who determined that claimant did not need surgery and was able and available to work as of that date. Claimant stopped attending the IWD classes and went about a job search. Claimant has continued that job search to this day and remains able and available for work.

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 claimant has stated that he did not have an injury that affected his being able and available for work, 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 September 29, 2016.

DECISION:

The decision of the representative dated December 15, 2016, reference 03 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective September 29, 2016, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs