

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHAD A BLACK**  
Claimant

**VL JEFFERSON LLC**  
Employer

**APPEAL 15A-UI-12961-DGT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 12, 2015 (reference 03) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on December 11, 2015. Claimant participated personally. Employer participated by Matt Gordon, Director.

**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 hired to work as a part-time maintenance supervisor on or about September 20, 2015. He was on-call and his hours varied depending on the needs of the employer. Claimant also had other part-time employment.

In the fall of 2015 employer decided that it would be best if it had a full-time maintenance supervisor to provide more coverage. Employer later hired a full-time maintenance worker and had claimant train the new employee. Claimant thought he was training a coworker not his replacement. Once the new maintenance worker was trained claimant's employment was terminated on or about October 23, 2015.

Claimant currently has part-time work but is looking for other part-time employment or perhaps full-time employment if a favorable position was offered to him.

**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 October 25, 2015.

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 Code § 96.3-6 provides:

6. Part-time workers.

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

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.

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. Emp't Appeal Bd.*, 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.*

Part-time workers are not required to be available for, seek, or accept full-time employment. Claimant was forced out of his part-time employment because he did not want to accept a full-time position. His original contract of hire was for part-time work. Claimant was not required to accept the offer of full-time work with this employer. He continues to be able and available for work at this time. Benefits shall be allowed effective October 25, 2015.

**DECISION:**

The decision of the representative dated November 12, 2015 (reference 03) is reversed. Claimant is eligible to receive unemployment insurance benefits effective October 25, 2015, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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