

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BLAKE A ANDERSON
Claimant

APPEAL 17A-UI-03389-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/29/17
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 22, 2017, (reference 06), unemployment insurance decision that denied benefits based upon not being able to or available for work the week-ending March 11, 2017. After due notice was issued, a telephone conference hearing was scheduled to be held on April 19, 2017. Claimant participated.

ISSUE:

Is the claimant able to work and available for work the week-ending March 11, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant missed two days of work the week-ending March 11, 2017, due to illness. There was work those days had he not been ill. During the week-ending March 18, 2017, he took a personal day for job interviews. He received the notice to report and called but could not report in person because was working. The Workforce advisor Bob in Cedar Rapids told him not to worry about it. Claimant is working full-time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for the period in question.

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. 871-24.23 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.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

Claimant worked three days and was ill two days that week. Unemployment insurance benefits are not meant to be a sick leave substitute. Accordingly, he is not eligible for unemployment insurance benefits for the week in question.

DECISION:

The March 22, 2017, (reference 06) unemployment insurance decision is affirmed. The claimant is not able to work and available for work the week-ending March 11, 2017. Benefits are withheld.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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