

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STANLEY REED
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 20A-UI-00141-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/14/19
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 24, 2019 (reference 06) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was not able to perform work effective October 6, 2019. The parties were properly notified of the hearing. A telephone hearing was held on January 27, 2020. The claimant, Stanley Reed, participated personally. The employer, Express Services Inc., did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant able to work and available for work effective October 6, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant suffered an injury to his back on September 15, 2019. Claimant was off of work for three days following the injury and then completed several weeks of physical therapy for the injury. He had restrictions in place which prevented him from lifting more than 0.50 pounds, walking and bending. Claimant was released without restrictions from his physical therapist on December 31, 2019. Claimant's administrative records establish that he has not filed any weekly-continued claims for benefits since the week-ending December 14, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to work effective October 6, 2019 through December 31, 2019. Benefits are denied from October 6, 2019 through the benefit week-ending December 28, 2019. Benefits are allowed effective December 29, 2019, provided the claimant remains otherwise eligible.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

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. 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. Emp't 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 was unable to work from October 6, 2019 through benefit week-ending December 28, 2019 due to his injury. As such, benefits are denied from October 6, 2019 through benefit week-ending December 28, 2019 due to his inability to work because of an injury. Claimant was released without restrictions and has established his ability to work effective benefit week beginning December 29, 2019 and continuing, so long as he remains otherwise eligible. As such, benefits are allowed effective December 29, 2019, provided the claimant is otherwise eligible.

The claimant must continue to earnestly and actively seek work for each weekly-continued claim filed. The claimant must make at least two job contacts each week and keep a written record of the contacts. The claimant may review the Claimant Handbook online at <https://www.iowaworkforcedevelopment.gov/2019-unemployment-insurance-claimant-handbook-pdf>.

DECISION:

The December 24, 2019 (reference 06) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work October 6, 2019 through benefit week-ending December 28, 2019 due to his injury. Benefits are denied for that period. Benefits are allowed effective December 29, 2019, provided the claimant remains otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs