

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**JOSE A GUZMAN**  
Claimant

**APPEAL NO. 18A-UI-00732-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/26/17**  
**Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Jose Guzman filed a timely appeal from the January 9, 2018, reference 01, decision that denied benefits effective December 17, 2017, based on the Benefit Bureau deputy's conclusion that Mr. Guzman was unable to perform work due to injury. After due notice was issued, a hearing was held on February 9, 2018. Mr. Guzman participated in the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-00733-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO) and of the claimant's weekly claims (KCCO).

**ISSUES:**

Whether Mr. Guzman was able to work and available for work during the week of December 17-23, 2017.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Guzman is a tradesman pipefitter. Mr. Guzman obtains employment in his trade through a trade union, either by appearing at the union hall each day or by being contacted by the trade union dispatch. Mr. Guzman established an original claim for benefits that was effective March 26, 2017 and an additional claim for benefits that was effective July 9, 2017. Mr. Guzman received unemployment insurance benefits that included \$120.00 in benefits for the benefit week that ended December 23, 2017. Mr. Guzman was able to work and available for work for most of the week of December 17-23, 2017. However, on Friday, December 22, 2017, Mr. Guzman was working on his car at home and suffered lower back pain. Mr. Guzman saw his doctor that same day. At the time of the appointment, Mr. Guzman's doctor took him off work until a follow up appointment set for 15 days later and referred Mr. Guzman for physical and/or occupational therapy. On December 26, 2017, Mr. Guzman made his weekly claim for the benefit week that ended December 23, 2017. When Mr. Guzman made his weekly claim for that week, he reported that he was not able and available for work because the reporting system did not offer an option to state that he was available some but not all of the days of the week. Mr. Guzman

discontinued his unemployment insurance claim following the benefit week that ended December 23, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

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(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.

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.

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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

The evidence in the record establishes that Mr. Guzman was able to work and available for work during the majority of the benefit week that ended December 23, 2017. Mr. Guzman made contact with the trade union that week. Mr. Guzman was able to work and available for work during that week until Friday, December 22, 2017, when he suffered injury at home. Because Mr. Guzman was able to work and available for work during the majority of the week, he satisfied the able and available requirements for that week and is eligible for benefits for that week, provided he meets all other eligibility requirements.

Because Mr. Guzman discontinued his unemployment insurance claim following the benefit week that ended December 23, 2017, the administrative law judge need not consider, for purposes of this decision, whether Mr. Guzman was able to work and available for work beyond December 23, 2017.

**DECISION:**

The January 9, 2018, reference 01, decision is reversed. The claimant was able and available for work during the benefit week that ended December 23, 2017. Accordingly, the claimant is eligible for benefits for that week, provided he meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs