

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAGDALENO ZAMORA
Claimant

APPEAL NO: 17A-UI-11841-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PDM PRECAST INC
Employer

**OC: 09/24/17
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

Magdaleno Zamora, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated November 7, 2017, reference 02 which denied unemployment insurance benefits as of September 24, 2017 finding that the claimant was not able to work due to injury. After due notice was provided, a telephone hearing was held on December 7, 2017. Claimant participated. Participating on behalf of the claimant was Mr. Jim Hamilton, non-attorney hearing representative. Appearing on behalf of the employer was Mr. Eric Updegraff, Attorney at Law. The witness for the employer was Mr. Eric Nixt, Controller. The Claimant's Exhibit 1 was admitted into the hearing record.

ISSUE:

Is the claimant is able and available for work within the meaning of the Iowa Employment Security Law?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Magdaleno Zamora was most recently employed as a pre-cast concrete worker/supervisor for PDM Precast, Inc. Mr. Zamora was employed full-time and was paid by the hour. Mr. Zamora left his employment with PDM Precast, Inc. on August 31, 2017 and later filed a claim for unemployment insurance benefits with an effective date of September 24, 2017.

After opening his claim for unemployment insurance benefits, the claimant and the employer participated in a fact-finding interview with a representative of Iowa Workforce Development. Mr. Zamora made the following statement to the fact-finder "As of 11/3/17 I am able to return to work. I was in a car accident in July and was not healing as quickly as my doctor wanted me to. I am on full release but with occasional lifting up to 40 pounds. I was having back issues since the car accident. I was not able and available for work from September 1, 17 through November 3, 17."

On November 3, 2017, Mr. Zamora had a medical appointment with Dr. Michael Nicholson, his physician. On November 7, 2017, Dr. Nicholson issued a medical statement certifying that as of

November 3, 2017, the claimant's restrictions were no repetitive lifting over 20 pounds and no lifting over 30 pounds because of shoulder pain. (See Claimant's Exhibit 1).

The Doctor's statement dated November 7, 2017, establishes that based upon his examination of Mr. Zamora as of November 3, 2017 the only medical restrictions on Mr. Zamora's ability to work are "no repetitive lifting over 20 pounds, no lifting over 30 pounds due to right shoulder pain". Mr. Zamora has been actively and earnestly seeking jobs with perspective employers that he could perform within the physical limitations set forth in his November 7, 2017 doctor's letter.

Mr. Zamora has been actively looking for work in management, supervisory positions, safety positions and other jobs that he can perform within the current physical limitations prescribed by his doctor.

REASONING AND CONCLUSIONS OF LAW:

The question in this case is whether the evidence establishes that Magdaleno Zamora is able to work within the meaning of the Iowa Employment Security Law. He meets the able and available requests of the law effective November 3, 2017.

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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is actively and earnestly seeking work. Iowa Code Section 96.4(3) and 871 IAC24.22. The claimant bear the burden in establishing the claimant meets the above requirements. 871 IAC24.22.

To satisfy the ableness requirement, the individual must be physically and mentally able to work in some gainful employment, not necessarily the individual's customary occupation, but one which is engaged by others as a means of livelihood. See 871 IAC24.22(1). With regard to illness or injury, each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC24.22(1)a. A statement from a medical practitioner is considered to be a prima facie evidence of physical ability of the physical ability of the individual to perform the work required. The statement is legally sufficient to establish the claimant's physical ability unless disproved by other evidence. See 871 IAC24.22(1)a.

Based upon the evidence in the record and the application and the appropriate law, the administrative law judge concludes that the claimant, Magdaleno Zamora has been able and available for work beginning the week ending date November 4, 2017. The claimant's work

limitations do not prevent him from seeking and obtaining gainful employment, although not in his customary occupation, but in occupations that are engaged in others as a means of livelihood in the claimant's geographic area.

DECISION:

The agency representative unemployment insurance decision dated November 7, 2017, reference 02 is affirmed as modified. The adjudicator's determination finding the claimant was not able to perform work due to injury as of September 24, 2017 is affirmed, the decision is modified to find that claimant is able and available for work effective November 4, 2017. Accordingly, the claimant is presently eligible to receive unemployment insurance benefits, providing that he meets all other requirements of Iowa Law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn