

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY L ROSS
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-15147-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Jeffrey L Ross, the claimant/appellant filed an appeal from the June 22, 2021, (reference 05) unemployment insurance decision that denied benefits as of September 20, 2020. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2021. Mr. Ross participated and testified. Christopher A Clausen, attorney at law, represented Mr. Ross. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record, including the April 8, 2021 administrative law judge decision in Appeal 21A-UI-04151-JC-T.

ISSUE:

Is Mr. Ross able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ross began working for the employer in February 2020. He worked as a full-time maintenance mechanic. He was separated from employment on September 8, 2020 when the employer terminated his employment.

On, or about September 1, 2020, Mr. Ross became drowsy at work. Mr. Ross had recently started taking a new prescribed medication. Mr. Ross does not remember many of the details other than he sat down, and that a medical staff from an ambulance were on the scene to help him. The employer told Mr. Ross that he had to submit a urinalysis (UA) sample before his next shift. Mr. Ross attempted to do so, but the employer terminated his employment.

Mr. Ross filed an initial claim for unemployment insurance benefits effective September 20, 2020. The administrative law judge in Appeal 21A-UI-04151-JC-T already determined that the employer discharged Mr. Ross for no disqualifying reason, and he is eligible for benefits, if he meets all other requirements. After the September 1 incident, Mr. Ross stopped taking that medication, and had no further issues. Mr. Ross searched for work, and filed weekly claims for the weeks ending September 26, 2020, October 3, 2020, and October 10, 2020.

On October 13, 2020, Mr. Ross was arrested and incarcerated in the Marshall County Jail. As of the hearing date, Mr. Ross continued to be incarcerated. With his permission, Mr. Ross' daughter filed weekly claims online for Mr. Ross from the week ending October 17, 2020 through the week ending February 13, 2021 so he could get any benefits for which he is eligible.

The employer did not respond to the administrative law judge's August 26, 2021 subpoena. However, Mr. Ross was not harmed since the subpoena dealt with issues during the time Mr. Ross was employed with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Ross is able to and available for work from September 20, 2020, the effective date of his claim, through October 12, 2020, and he is not available for work as of October 13, 2020.

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. 871-24.22(2) provides:

Benefit 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.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(12) provides:

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

(12) If a claimant is in jail or prison, such claimant is not available for 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. 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. A person claiming benefits has the burden of proof that they are be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Mr. Ross is able to and available for work from September 20, 2020 through October 12, 2020. Mr. Ross had stopped taking the medication that caused him the issue on September 1, 2020, and he was actively and earnestly looking for employment. Since Mr. Ross is able to and available for work, benefits are allowed during this time period, provided he is otherwise eligible.

Mr. Ross is not available to work as of October 13, 2020 when he arrested and incarcerated.

DECISION:

The June 22, 2021 (reference 05) unemployment insurance decision is modified in favor of the appellant, Mr. Ross. Mr. Ross is able to and available for work from September 20, 2020 through October 12, 2020. Benefits are allowed during this time period, provided he is otherwise eligible.

Mr. Ross is not available to work as of October 13, 2020. Benefits are denied as of October 13, 2020.



Daniel Zeno
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September 23, 2021
Decision Dated and Mailed

dz/km