

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

RODNEY E JONES

Claimant

BLUE MARBLE ENVIRONMENTAL LLC

Employer

APPEAL 23A-UI-02924-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/05/23

Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Rodney E. Jones, the claimant/appellant filed an appeal from the Iowa Workforce Development (IWD) March 6, 2023 (reference 01) unemployment insurance (UI) decision. The decision denied Mr. Jones REGULAR (state) UI benefits as of February 5, 2023 because IWD concluded he was not able to work at that time due to injury. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Mr. Jones and the employer. The undersigned administrative law judge held a telephone hearing on April 5, 2023. Mr. Jones participated personally. Bruce Stoltze, attorney, represented Mr. Jones. The employer participated through Michael Nolan, office controller and Jared Denny, co-owner.

ISSUE:

Is Mr. Jones able to and available for work as of February 5, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Jones' finger became infected in mid-2022. Mr. Jones went to the doctor who found four strains of bacteria in his infected finger. The doctor told Mr. Jones that he could have gotten the bacteria from working in dirt anywhere. Mr. Jones only worked in dirt at work so he assumed his injury was a work-related injury. The doctor also told Mr. Jones to stop working until the infection was gone. Mr. Jones stopped working. Mr. Jones filed a worker's compensation (comp) claim in late September 2022. The employer told Mr. Jones that he could not return to work until his worker's comp claim was resolved.

In September 2022, Mr. Jones attempted to return to work. The employer told Mr. Jones to get a doctor's not releasing him to return to work. Mr. Jones went to the doctor. The doctor gave him a note releasing him to return to work as long as he kept his finger covered by wearing a glove. Mr. Jones gave the note to the employer but the employer would not let Mr. Jones return to work until his worker's comp claim was resolved.

On, or about, November 8, 2022, Mr. Jones' worker's comp claim was denied. Both Mr. Jones and the employer learned of the denial on, or about, this date. Mr. Jones never received any

worker's comp benefits. Mr. Jones contacted the employer several times after the denial and asked to return to work. The employer told Mr. Jones in November 2022 that the employer did not have work available for him because of the winter season. On November 29, 2022, Mr. Jones asked the employer about returning to work. Mr. Denny told Mr. Jones that since the employer had previously told Mr. Jones that he could come back to work and he had not done so the employer considered him to have quit.

As of the appeal hearing date, Mr. Jones' doctor continues to advise him that he can work as long as he keep his finger covered by wearing a glove. Mr. Jones has worked for the employer since September 2019 as a laborer and he has about twenty years of experience as a laborer. Mr. Jones is able to do work within his doctor's restrictions.

IWD has not investigated or issued a decision on Mr. Jones' eligibility for UI benefits based on how his job ended with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Jones is able to and available for work as of February 5, 2023.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(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 medical practitioner and has not been released as being able to 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."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

¹ *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).

which the individual resides.”² A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.³

Mr. Jones has established that he is able to and available for work as of February 5, 2023. Although Mr. Jones’ doctor continues to advise him to wear a glove, he is able to work in some gainful employment. Since Mr. Jones is able to and available for work as of February 5, 2023, benefits should be allowed as of this date.

DECISION:

The March 6, 2023 (reference 01) UI decision is REVERSED. Mr. Jones is able to and available for work as of February 5, 2023. Benefits are allowed as long as no other decision denies him UI benefits.

REMAND:

The issue of Mr. Jones’ eligibility for UI benefits based on his separation from employment with this employer is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



Daniel Zeno
Administrative Law Judge

April 11, 2023
Decision Dated and Mailed

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NOTE TO MR. JONES:

- This decision finds you eligible for UI benefits, but to receive the benefits **you have to file weekly UI claims.**
- You can contact Iowa Workforce Development for help filing your weekly UI claims.

IWD Customer Service number: 1-866-239-0483
IWD UI benefits email: uiclaimshelp@iwd.iowa.gov

² Sierra at 723.

³ Iowa Admin. Code r. 871-24.22.

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.