

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEREK A BUTTON
Claimant

APPEAL 22A-UI-01289-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/18/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Derek A Button, the claimant/appellant filed an appeal from the December 3, 2021 (reference 03) unemployment insurance decision that denied benefits from September 12, 2021 through September 18, 2021 because he was not ready, willing or able to work. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2022. Mr. Button participated and testified. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Button able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Button filed an initial claim for benefit effective July 18, 2021. He filed weekly claims from July 18 through October 9. When he filed his September 12-18 weekly claim, Mr. Button accidentally picked the “No” option when asked if he was ready, willing and able to work that week. Mr. Button reported making two job contacts that week. Mr. Button was not ill that week and was not under doctor’s advice to not attend work that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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(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(1) and (10) provide:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

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 she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Mr. Button is able to and available for work the week of September 12-18, 2021. Mr. Button accidentally picked "No" when asked if he was ready, willing and able to work that week. Since

Mr. Button is able to and available for work, benefits are allowed the week of September 12-18, 2021.

DECISION:

The December 3, 2021, (reference 03) unemployment insurance decision is reversed. Mr. Button is able to and available for work the week of September 12-18, 2021. Benefits are for that week allowed, provided he is otherwise eligible.



Daniel Zeno
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February 24, 2022
Decision Dated and Mailed

dz/mh