

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AARON HARBESON
Claimant

AEROTEK INC
Employer

APPEAL 19A-UI-08491-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On October 29, 2019, Aaron Harbeson (claimant) filed an appeal from the October 24, 2019, reference 01, unemployment insurance decision that denied benefits effective September 22, 2019 based on the determination he requested and was granted a leave of absence from Aerotek, Inc. (employer). After due notice was issued, a telephone conference hearing was held on December 2, 2019 and was consolidated with the hearing for appeal 19A-UI-08492-SC-T. The claimant participated. The employer did not respond to the hearing notice and did not participate. No exhibits were admitted into the record.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective September 22, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for the employer beginning in February 2019. He was assigned to work for the employer's client, Hy-Vee, in a temporary full-time capacity on the cut floor preparing short cut food sold in its stores. On June 6, the claimant injured his shoulder while moving a bin of product. He was released back to work with the restriction of lifting no more than ten-pounds with his left arm. The claimant notified the employer of the restriction. Hy-Vee will not allow the claimant to return to work until he has been released to work without restriction. The employer did not have any assignments that fit within the claimant's restriction. The claimant filed his claim for unemployment insurance benefits effective September 22, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work. Benefits are allowed.

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. 871-24.23 provides, in relevant part:

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.

...

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. As the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions, the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The unemployment insurance decision dated October 24, 2019, reference 01, is reversed. The claimant is able to work and available for work effective September 22, 2019. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid to the claimant.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn