

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY L HODGINS
Claimant

APPEAL 20A-UI-01616-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/12/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On February 21, 2020, Timothy L. Hodgins (claimant) filed an appeal from the February 17, 2020, reference 02, unemployment insurance decision that denied benefits effective January 12, 2020 based upon the determination he was not able to or available for work due to injury. After due notice was issued, a telephone conference hearing was held on March 10, 2020. The claimant participated. The Claimant's Exhibit A was admitted into the record. The administrative law judge took official notice of the fact-finding documents.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective January 12, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective January 12, 2020. Initially, he was denied benefits based on his November 8, 2019 separation from Bomgaars Supply, Inc. (employer) but that decision was overturned following a hearing with an administrative law judge.¹ During the hearing held on January 8, 2020, the claimant indicated he had been injured at work and was still unable to work after being released to work without restriction by the employer's workers' compensation doctor. The administrative law judge remanded the issue of able to and available for work back to the Benefits Bureau for a fact-finding interview.

On February 14, the claimant's personal doctor stated he is able to work without restriction. The claimant is currently not experiencing back pain and is making two job contacts each week.

¹ See Amended Administrative Law Judge Decision in appeal 19A-UI-09747-B2T.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work, available for work, and made an earnest search for work effective February 16, 2020. Benefits are allowed after that date, provided he is otherwise eligible.

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 provides, in relevant part:

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.

...

(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 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. The claimant determined he was unable to work following his release to return to work without restriction by the workers' compensation doctor. The claimant's personal doctor did not release him to work without restrictions until February 14. Accordingly, the claimant is not eligible for unemployment insurance benefits from January 12 through the week ending February 15, 2020. He is eligible for unemployment insurance benefits effective February 16, 2020, provided he is otherwise eligible.

DECISION:

The February 17, 2020, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective February 16, 2020. Benefits are allowed after that time, 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

March 16, 2020
Decision Dated and Mailed

src/scn