

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GREGORY CHARLES
Claimant

FEDERAL EXPRESS CORP
Employer

APPEAL 21A-UI-14670-ML-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 16, 2021, (reference 03) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on August 11, 2021. Claimant participated personally. Employer did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was not able to work and available to work beginning on October 16, 2020 because of an injury. Claimant ruptured his Achilles tendon on October 16, 2020. He had to take time off while he underwent treatment. Claimant had surgery on the ruptured Achilles on November 2, 2020. Claimant was unable to perform in his position with the employer from October 16, 2020, until separating from employment on or about March 25, 2021. Claimant was able to perform sedentary work for his full-time employer during and after his period of recovery.

Claimant began working for the employer in a part-time role in August or September of 2020. As part of his job duties, claimant had to load and unload metal containers from FedEx planes. He also had to lift and carry FedEx packages that weighed between 1 and 150 pounds. On or about October 16, 2020, claimant was not able to work his regular part-time hours because he was suffering from a non-work-related injury. It appears as though FedEx granted claimant a leave of absence from work while he attended doctor's appointments and treatment for said injury. Claimant was off work and recovering from his injury between October 16, 2020, and March 25, 2021.

On or about March 25, 2021, claimant was released from physical therapy without restrictions.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.23(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.

Iowa Admin. Code r. 871-24.23(10) provides:

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.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant is considered to be on a leave of absence due to illness or injury beginning on October 16, 2020. Claimant is not eligible for regular, state-funded unemployment insurance benefits beginning on that date. Benefits are denied from the benefit week ending October 17, 2020, through the benefit week ending March 27, 2021.

Claimant is able and available for work effective with the benefit week ending April 3, 2021. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Since he has performed sedentary jobs within his work history, he is considered able to work even if he cannot yet return to a job as most recently performed for the employer.

The issue of separation from employment shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The decision of the representative dated June 16, 2021, (reference 03) that denied benefits as of March 28, 2021, based on a finding claimant was unable to work due to injury is modified in favor of the appellant. Claimant is eligible for benefits as set forth above.

REMAND:

The issue of Mr. Charles' separation from employment with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Michael J. Lunn
Administrative Law Judge
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August 26, 2021
Decision Dated and Mailed

mjl/scn