

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEMETRIUS A HARRIS
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 18A-UI-10586-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/04/18
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:

Demetrius A. Harris (claimant) filed an appeal from the October 22, 2018, reference 07, unemployment insurance decision that denied benefits based upon the determination he is not able to work effective September 30, 2018 due to injury. After due notice was issued, a telephone conference hearing was scheduled to be held on November 7, 2018. However, at the time of the hearing, the claimant requested to postpone as he had been in a car accident. His request was granted and new hearing notices were issued for a hearing to be held on November 28, 2018. At the time of the hearing, the claimant did not answer his phone and later notified the administrative law judge he had not received the hearing notice which was recorded as part of the appeal hearing for 18A-UI-10587-SC-T. The hearing was rescheduled for December 12, 2018 and new hearing notices were issued. The claimant participated. Express Services, Inc. (employer) responded to the initial hearing notice and registered a phone number but indicated it did not want to participate in the hearing. The Claimant's Exhibit A was admitted into the record. The administrative law judge took official notice of the administrative record, including the fact-finding documents.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective September 30, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his original claim for benefits effective February 4, 2018. He worked for the employer during the third quarter of 2018. The claimant went to the Emergency Room for back pain in mid-September. The claimant was diagnosed with a lipoma which puts pressure on the nerves in his back. He was told to follow-up with a specialist.

On or about October 3, 2018, the claimant reported to the employer that he was unable to work due to back pain. The employer requested the claimant provide medical documentation stating he was able to work and if he had any restrictions so they could find him another assignment. The claimant reactivated his claim for benefits effective September 30, 2018.

On October 22, 2018, the claimant saw the specialist and was released to work with restrictions of lifting only occasionally, or less than 25 percent of his work day, and lifting no more than 25 pounds. The claimant has held numerous jobs in the past in multiple industries. He is currently looking for jobs that will accommodate his restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work from September 30 through October 20, 2018 and benefits are denied. The claimant is able to and available for work effective October 21, 2018. Benefits are allowed effective October 21, 2018, 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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 able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant sought medical treatment for his back in mid-September. He notified the employer at the beginning of October that he was unable to work due to his injury. He was not released to work by his treating physician until October 22, 2018. The claimant was under medical care and unable to work from September 30 through October 20, 2018, rendering him ineligible for benefits for that period.

The claimant was released to return to work with restrictions by his physician on October 22, 2018. While he is not able to work in his customary profession due to the lifting restrictions, he is able to work in other jobs for which he is qualified. Benefits are allowed effective October 21, 2018, provided the claimant is otherwise eligible.

DECISION:

The October 22, 2018, reference 07, unemployment insurance decision is modified in favor of the appellant, in this case the claimant. The claimant was not able to work from September 30 to October 20, 2018 and benefits for this period are denied. He is able to and available for work effective October 21, 2018. Benefits are allowed, provided the claimant is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn