68-0157 (9-06) - 3091078 - EI

CURTIS S GAULEY
Claimant

**IOWA WORKFORCE
 DEVELOPMENT DEPARTMENT**

APPEAL NO: 14A-UI-05248-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/20/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Curtis S. Gauley (claimant)) appealed a representative's May 15, 2014 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits because he was not able and available for work.   After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2014. The claimant participated in the hearing.   This appeal was consolidated for hearing with one related appeal, 14A-UI-05247-DT. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant was scheduled to report back to work at 10:15 p.m. on April 16. He was also scheduled to work on the night of April 17, April 18, April 19, and April 20. However, he was arrested at about 1:15 p.m. on April 15 and was held in the Linn County jail until the evening of April 19. On April 19 the claimant attempted suicide. His parents transported him to a hospital that same day where he was in a secure unit with limited phone access. He was diagnosed with depression and anxiety and panic disorders.

The claimant stayed in the hospital facility on an inpatient basis for three weeks. He remained in an outpatient program for another three weeks. He was not out of the hospital program until on or about June 5, 2014. He was seen by his medical care provider at that time, but they did not discuss whether the claimant was sufficiently recovered so as to be able to begin searching for work. The medical care provider did not affirmatively indicate that the claimant was released as able to work.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found 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); 871 IAC 24.22(1). A claimant must remain available for work on the same basis as when his base period wages were accrued. Rule 871 IAC 24.22(2)f.

A person who is under a medical practitioner's care and who has not been released by that medical practitioner as able to work is considered to be not able and available for work. Rule 871 IAC 24.23(35). The claimant has been under the care of a medical practitioner and, as of the date of the hearing, has not been released by that practitioner as able to work, particularly not as able to work to the extent he had previously been working. The claimant is not currently able and available for work as defined for unemployment insurance benefit eligibility. As the status of being able and available for work can vary on a week-to-week basis, the claimant can demonstrate that he is able and available for work in future weeks by, in part, establishing that his medical practitioner has released him as able to work without any restrictions, and that he is actively seeking full-time work.

DECISION:

The representative's May 15, 2014 decision (reference 04) is affirmed. The claimant is not able to work and available for work effective April 20, 2014. The claimant is not currently qualified to receive unemployment insurance benefits.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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