

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN J SHEARON
Claimant

SHORT STAFFED INC
Employer

APPEAL 18A-UI-04141-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17
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:

Brian J. Shearon (claimant) filed an appeal from the March 26, 2018, reference 03, unemployment insurance decision that denied benefits based upon the determination he was not able to or available for work effective February 4, 2018. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2018. The claimant participated. Short Staffed, Inc. (employer) participated through Payroll Manager Ashley Ahrendsen. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective February 4, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on January 16, 2018, in a part-time capacity. He was last assigned at Overhead Door from February 23, 2018 to March 9, 2018. After the assignment ended, the claimant did not report to the employer within three working days and request further assignment as required by written policy. The claimant signed and received a copy of the employer's policy.

On March 20, 2018, the employer contacted the claimant to offer him a position and he explained that he had hurt his shoulder on the last day of his assignment and could not work. The claimant did not seek medical advice regarding his injury or ability to work. He had hurt his shoulder in the past and knows to ice and rest it. On March 28, 2018, the employer again contacted the claimant to offer him a position and he stated that he had obtained a part-time job

and did not need another assignment. By that time, the claimant's shoulder had healed. The claimant did not work in the new job as he would not be earning insured wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work, available for work, and making an earnest search effective March 11, 2018 through the week ending March 31, 2018.

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. 871-24.22(2) provides, in relevant part:

Benefit 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.

(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.

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 claimant removed himself from work without a medical directive, he is not able to or available for work beginning March 11, 2018 through the week ending March 31, 2018. Benefits for that period are denied.

DECISION:

The March 26, 2018, reference 03, unemployment insurance decision is modified in favor of the claimant. The claimant was not able to work and available for work effective March 11, 2018 through the week ending March 31, 2018. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn