

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWN A SHILL
Claimant

APPEAL 18A-UI-10891-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/14/18
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2018, (reference 05) unemployment insurance decision that withheld benefits from August 19, 2018 through October 20, 2018 based upon a determination that he was unable to work due to injury. The claimant was properly notified about the hearing. A telephone hearing was held on November 20, 2018. Claimant participated and testified. Claimant's Exhibit A was received into evidence.

ISSUE:

Is the claimant able to work and available for work effective August 19, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 5, 2018, claimant had back surgery. Claimant was released to return to work with a permanent 10 pound lifting restriction on July 10, 2018. Claimant attempted to return to his most recent employer, where he worked as an auto parts salesman, but was separated from employment. A separate decision has been issued on that separation. Claimant has a variety of work experience in sales, as well as experience as a cook and custodian. He has been applying for some work that he finds fall outside of his restrictions, but he has been applying for multiple jobs within his restrictions, such as a driver, salesman, and cashier.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 19, 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. 871-24.23(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.

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. 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); 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant was released to return to work on July 10, 2018 with a 10-pound lifting restriction. However, claimant has since been separated from employment. At the point where claimant was separated from employment, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Claimant has a variety of work experience and, while he has been applying for some work outside of his restrictions, he is also applying for numerous positions within those restrictions. Since he has performed jobs that do not require him to lift more than 10 pounds within the work history and is continuing to apply for jobs within his lifting restriction, he is considered able to work even if he cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of August 19, 2018.

Claimant is on notice that he must conduct at least two work searches, within his lifting restrictions, per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The October 31, 2018, (reference 05) unemployment insurance decision is reversed. The claimant is able to work and available for work effective August 19, 2018. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs