

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODY A MORGAN

Claimant

APPEAL 19A-UI-08511-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & S PLUMBING HEATING

Employer

OC: 10/06/19

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Eligibility – Able to, available for work

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 24, 2019 (reference 01) unemployment insurance decision that denied benefits as of October 6, 2019 based upon a finding that claimant was not able to perform work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on November 21, 2019, at 9:00 a.m. Claimant participated with his attorney, Mark Chipokas. Employer did not participate. Claimant's Exhibits A – C were admitted.

ISSUE:

Whether claimant was able to and available for work.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant is employed with J & S Plumbing and Heating as a full-time plumber's assistant. On August 15, 2019, claimant had an appointment with a physician for pain in his lower back. The physician advised claimant not to return to work and referred claimant to a surgeon. On August 22, 2019, claimant had an appointment with a surgeon who also advised claimant not to return to work. On September 17, 2019, claimant had surgery for a herniated disc. On October 2, 2019, claimant's physician released claimant to return to work for light duty on October 9, 2019 with restrictions of not lifting greater than 10 pounds and not repetitively bending, twisting or stooping. (Exhibit B) Claimant informed employer of the release to light duty; employer did not accommodate claimant's restrictions. Claimant has performed light duty work for employer in the past. Claimant can perform many of his regular job duties within these restrictions. Claimant could perform other jobs in the construction field within these restrictions and has performed those jobs in the past. On October 23, 2019, claimant's physician released claimant to return to work for full duty on November 6, 2019 with no restrictions. (Exhibit A) Claimant returned to work for employer. Claimant had no barriers to his ability to or availability for work since October 9, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work as of October 9, 2019. Benefits are allowed effective October 6, 2019, provided claimant 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(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.

Claimant was able to and available for work as of October 9, 2019; therefore, benefits are allowed effective October 6, 2019, provided claimant is otherwise eligible.

DECISION:

The October 24, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was able to and available for work as of October 9, 2019. Benefits are allowed effective October 6, 2019, provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn