

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY T MURDOCK
Claimant

ADVENTURE LANDS OF AMERICA INC
Employer

APPEAL 17A-UI-10361-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/17/17
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:

Gary T. Murdock (claimant) filed an appeal from the October 2, 2017, reference 02, unemployment insurance decision that denied benefits based upon the determination he was not able to and available for work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2017. The claimant participated personally. Adventure Lands of America, Inc. (employer) participated through General Manager Joseph Formaro. No exhibits were offered into the record.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective September 17, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Maintenance employee beginning on April 13, 2016, and his last day worked was May 6, 2017. The claimant has a mental impairment and had previously required in-patient treatment during his employment. After his treatment, the claimant returned to work.

On May 6, the claimant notified his supervisor Assistant Manager Justin Bisom that he was experiencing symptoms related to his mental impairments. Bisom advised the claimant to check himself into the hospital and get well. The claimant went to Mercy Hospital and received in-patient care until he was released by his treating physician on May 11, 2017. The claimant learned from another employee that his employment had ended. The following day, he contacted Bisom about returning to work and Bisom told him that he was no longer employed.

On May 15, 2017, the claimant voluntarily entered a residential treatment program through Bethel Mission. He was not allowed to work until he entered the third phase of the program on October 20, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for the five-week period ending October 21, 2017 and benefits are denied. The claimant is able to and available for work effective October 22, 2017 and benefits are allowed, 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(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:

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.

(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(1) provides:

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. The claimant sought and received treatment for his impairment. Under the treatment program, he is able to work beginning October 20, 2017. The claimant was not able to and available for work for the five-week period beginning September 17, 2017 through October 21, 2017. However, he is able to and available for work effective October 22, 2017. Benefits are allowed after October 22, 2017, provided he is otherwise eligible.

DECISION:

The October 2, 2017, reference 02, unemployment insurance decision is modified in the claimant's favor. The claimant was not able to and available for work for the five-week period beginning September 17, 2017 through October 21, 2017 and benefits for that period are denied. The claimant is able to work and available for work effective October 22, 2017. Benefits are allowed, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn