IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

NATHANIEL CORTEZ
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 17R-UI-09844-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/21/17
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 11, 2017 (reference 02) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was not able to perform work. The claimant was properly notified of the hearing. A telephone hearing was held on October 10, 2017, after a remand from the Employment Appeal Board. The claimant, Nathaniel Cortez, participated personally. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant able to work and available for work effective July 23, 2017 through July 29, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The facts in this matter are undisputed. Claimant filed his weekly claim for benefits for the week ending July 29, 2017 and incorrectly reported that he was not able to and available for work. Claimant was able to and available for work. Claimant has been actively and earnestly seeking work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective July 23, 2017 through July 29, 2017.

Iowa Code § 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 § 96.19,

subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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)).

The claimant made an error in reporting his weekly continued claim for benefits for the week ending July 29, 2017. Claimant was able to and available for work during that week. Claimant has been earnestly and actively seeking work.

DECISION:

The August 11, 2017 (reference 02) unemployment insurance decision is reversed. The claimant is able to and available for work effective July 23, 2017 through July 29, 2017. Benefits are allowed, provided he is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/rvs