

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRY C CALDWELL
Claimant

ALL CLEAR WINDOW CLEANING INC
Employer

APPEAL 18A-UI-00464-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/29/17
Claimant: Respondent (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the January 5, 2018, (reference 06) unemployment insurance decision that allowed benefits beginning December 31, 2017. The parties were properly notified about the hearing. A telephone hearing was held on February 2, 2018. Claimant participated. Employer participated through office manager MaryJo Pina. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the claimant able to work and available for work effective December 31, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired on November 30, 2016, as a full-time window clear. When claimant was hired, he informed the employer that he had a torn ACL; claimant tore his ACL on November 7, 2016. The last day claimant worked for the employer was on December 17, 2016. Claimant had ACL surgery on December 30, 2016. Claimant told the employer he could not work after his surgery. Claimant told the employer he could not return to work until he had recuperated. The employer agreed to place claimant on a leave of absence due to his ACL surgery. Claimant did not give the employer a return date.

The next time the employer heard from claimant was on April 19, 2017 during a fact-finding interview. The employer considered claimant to have separated from employment prior to the April 19, 2017 fact-finding interview. The employer did not hear from claimant after the fact-finding interview.

Claimant's doctor released him to return to work without restrictions on January 2, 2018. Employer Exhibit 1. Claimant did not contact the employer after he was released to return to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work effective December 31, 2017.

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). Claimant had surgery on his non-work related torn ACL on December 30, 2016. The employer is not obligated to accommodate a non-work related medical condition. Claimant's doctor released him to return to work with no restrictions on January 2, 2018. Claimant Exhibit A. Inasmuch as claimant's doctor has released the claimant to return to work

as of January 2, 2018, he has established his ability to work. Because claimant was eligible to work the majority of the work week during the week-ending January 6, 2018, claimant is able to and available for work effective December 31, 2017. Benefits are allowed effective December 31, 2017, provided claimant is otherwise eligible.

DECISION:

The January 5, 2018, (reference 06) unemployment insurance decision is affirmed. Claimant is able to work and available for work effective December 31, 2017. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The separation issue (from ALL CLEAR WINDOW CLEANING INC) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs