

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEPHEN M MORRILL**  
Claimant

**APPEAL 16A-UI-11773-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FERRARA CANDY COMPANY**  
Employer

**OC: 07/31/16  
Claimant: Appellant (1)**

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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 25, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work as of July 31, 2016, due to illness. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2016. The claimant, Stephen M. Morrill, participated. The employer, Ferrara Candy Company, did not register a telephone number at which to be reached and did not participate in the hearing.

**ISSUE:**

Is the claimant able to work and available for work effective July 31, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a warehouse forklift operator, from June 7, 2010, until July 29, 2016, when he was discharged due to attendance points. Claimant has filed for disability benefits. He is looking for some kind of work that he can do, given that he has Achilles' tendon disorder and chronic pain. Claimant struggles with sitting, standing, and repetitious movements. Claimant is unable to work more than half of each month due to his illness. Claimant is looking for any kind of employment when he could work at least a few hours a day or a week that would not affect his disability claim. Claimant has been a machine operator, a packer, and a forklift operator. Claimant has experience lifting and packing boxes, panning (making product), operating a machine. Claimant is looking for any type of work. Claimant has recently applied at a hardware store, an auto parts store, and a convenience store. He has some retail experience dating back to his years in college.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not able to work and available for work effective July 31, 2016. Benefits are withheld.

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 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. 871-24.23(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.

Iowa Admin. Code r. 871-24.22(2)f provides:

**Benefit 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.

*f. Part-time worker, student--other.* Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). *In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.*

(Emphasis added.) 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)).

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant testified that he is able to work less than half of the days in each month due to illness. Claimant has limited his work search to part-time positions only, though his base period wages reflect a history of full-time employment. Claimant is not available for work to the same extent as when his wage credits were accrued. Therefore, claimant is deemed not able and available for work. Benefits are withheld.

**DECISION:**

The October 25, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective July 31, 2016.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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