

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LYLE DE WIT**  
Claimant

**WEI SALES LLC**  
Employer

**APPEAL 20A-UI-00128-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/01/19**  
**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 December 27, 2019 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was not able to perform work due to injury. The claimant was properly notified of the hearing. A telephone hearing was held on January 27, 2020. The claimant, Lyle De Wit, participated personally. Attorney Ron Pohlman represented the claimant. The employer, WEI Sales LLC did not participate. Claimant's Exhibit A was admitted. 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 December 1, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant sustained a work related injury. Claimant has since been released to work without restrictions effective August 30, 2019. See Exhibit A. Claimant is 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 December 1, 2019.

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)).

Because the treating physician has released the claimant to return to work without restrictions, he has established his ability to work. Claimant is available for work. Claimant is earnestly and actively seeking work. Benefits are allowed effective December 1, 2019, provided the claimant is otherwise eligible.

#### **DECISION:**

The December 27, 2019 (reference 02) unemployment insurance decision is reversed. The claimant is able to and available for work effective December 1, 2019. 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