

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LANDON A GORDON
Claimant

BOTTLING GROUP LLC
Employer

APPEAL 21A-UI-17895-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/23/21
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On August 12, 2021, the claimant filed an appeal from the August 4, 2021, (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant was not available for work due to surgery. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2021. Claimant Landon Gordon participated personally. Employer Bottling Group, LLC registered a witness for the hearing, but the witness was unavailable at the time of the hearing and did not participate. Claimant's Exhibit A was admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work effective May 23, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 24, 2014. Claimant worked for employer as a full-time quality supervisor until February 16, 2021, when he was discharged.

On November 20, 2019, claimant underwent surgery for a non-work related injury. He requested, and was granted, a leave of absence from employer. On February 1, 2020, claimant's doctor released him to return to work without restrictions. Claimant promptly notified employer of his release to work. Employer informed claimant it had backfilled his position, so there was no position available for him. On February 16, 2021, employer terminated claimant's employment.

Claimant's separation from employment was addressed in an August 4, 2021 (reference 01) decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective May 23, 2021.

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.

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)).

Inasmuch as the medical condition was not work-related but employer permanently filled the job before he was released to return to work; and when the treating physician had released him to return to work without restriction no suitable, comparable work was available, claimant has established his ability to and availability for work. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The August 4, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is available for work effective May 23, 2021. Benefits are allowed, provided he is otherwise eligible.



Stephanie Adkisson
Administrative Law Judge
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October 7, 2021
Decision Dated and Mailed

sa/scn