

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GARRETTE F BOONE**  
Claimant

**ROC TAPROOM INC**  
Employer

**APPEAL 18A-UI-10395-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/09/18**  
**Claimant: Appellant (2R)**

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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 10, 2018 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to injury. The parties were properly notified of the hearing. A telephonic hearing was held on November 1, 2018. The claimant, Garrette F. Boone, participated. The employer, ROC Taproom, Inc., participated through Jessica Walsh, Director of Human Resources.

**ISSUE:**

Is the claimant able to work and available for work effective September 9, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a line cook, from November 10, 2017, until August 22, 2018. Claimant was playing basketball before work and he rolled his ankle. He went to the walk-in clinic and was told to take several days off work. Claimant's ankle healed after several days and he was able to return to work.

Claimant is currently available for work. Since he commenced filing for unemployment insurance benefits, claimant has not been sick or out of town. Claimant is seeking employment in the culinary field. He has applied for at least two jobs each week since he started filing for unemployment insurance benefits.

Based on the testimony presented during the hearing, it appears claimant has separated from his employment. The separation has not yet been the subject of a fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is currently able to and available for work. Benefits are allowed, provided he is otherwise eligible.

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. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact-finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony regarding his health condition credible.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant testified that he is currently physically able to work. It is reasonable to believe that claimant's rolled ankle has had ample time to heal since mid-August 2018. Accordingly, benefits are allowed.

The issue of claimant's separation from this employer will be remanded for additional investigation.

**DECISION:**

The October 10, 2018 (reference 02) unemployment insurance decision is reversed. Claimant is able to work, available for work, and actively and earnestly seeking work effective September 9, 2018. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:**

The issue of claimant's separation from employer ROC Taproom, Inc. is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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