

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMAAL R CLARKSON
Claimant

NATIONWIDE MUTUAL INSURANCE CO
Employer

APPEAL 16A-UI-12011-DL-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/25/16
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2016, (reference 04) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2016. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibits A and B were received.

ISSUE:

Is the claimant able to work and available for work effective September 25, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment ended on September 9, 2016. He left treatment with Unity Point at Iowa Lutheran after six weeks on August 17, 2016. The program result has been successful and he is able to work. He is enrolled with Project Iowa through AMOS and Evelyn Davis for specialized training for ten weeks ending the second week of January 2017. He is available for work and may suspend his training if he is offered work. Claimant has been making more than the minimum work searches each week.

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, and made an earnest search for work for the period in question.

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. 871-24.22(2) 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.

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant successfully completed the leave of absence treatment period and returned to the employer to offer his services but was discharged for no disqualifying reason. He has established that he is genuinely attached to the labor market. Accordingly, he is eligible for unemployment insurance benefits.

DECISION:

The October 31, 2016, (reference 04) unemployment insurance decision is reversed. The claimant is able to work and available for work effective September 25, 2016. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs