

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**DAVID D KLEINBERG**

Claimant

**APPEAL NO. 19A-UI-01796-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**U S SECURITY ASSOCIATES INC**

Employer

**OC: 01/20/19**

**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

David Kleinberg filed a timely appeal from the February 18, 2019, reference 02, decision that denied benefits effective January 20, 2019, based on the deputy's conclusion that Mr. Kleinberg was unable to work due to injury. After due notice was issued, a hearing was held on March 14, 2019. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-01797-JTT. Mr. Kleinberg participated. Robert Collins represented the employer. Exhibits A and B and Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

Whether Mr. Kleinberg has been able to work and available for work since January 20, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: David Kleinberg is employed by U.S. Security Associates, Inc. as a full-time security officer. Mr. Kleinberg began the employment in April 2018 and last performed work for the employer on January 17, 2019. Mr. Kleinberg's regular work hours are 2:00 p.m. to 10:00 p.m. Monday through Friday or Sunday through Thursday. Mr. Kleinberg was assigned to a Farmland pork processing plant in Denison. Mr. Kleinberg's was responsible for checking tractor-trailer rigs as they entered and left the gate to the facility. The work required that Mr. Kleinberg be able to walk to the truck, inspect the inside of the trailer from ground level, and obtain refrigeration data from the side of the "box" at the front of the trailer. After the east gate would close down at 9:00 p.m., Mr. Kleinberg would use a golf-cart like vehicle to travel to the west gate to perform additional duties.

On or about January 17, 2019, Mr. Kleinberg felt pain as he stepped down on his foot immediately before his shift was to start. Mr. Kleinberg did not realize at the time that he had broken his foot. Though continued to experience sharp pain, Mr. Kleinberg completed his shift and then went to an emergency room for assessment of his foot. The emergency room physician referred Mr. Kleinberg to an orthopedist. The orthopedist placed multiple restrictions on Mr. Kleinberg that effectively took Mr. Kleinberg off work entirely. The restrictions included:

No weight bearing on affected leg/foot  
Use crutches/walker/scooter for ambulation

Avoid stairs and ladders  
No pivoting, twisting, squatting or kneeling  
Keep cast clean, dry and intact  
Keep out of harsh, dirty environment

...

Patient should not ambulate on any uneven ground, slick or icy surface. Floor level activities only. He should not be climbing in and out of trucks or on equipment.

Mr. Kleinberg was unable to perform the essential functions of his job. Mr. Kleinberg's doctor subsequently provided a medical restriction document that explicitly took Mr. Kleinberg off work through April 30, 2019.

Mr. Kleinberg established an original claim for unemployment insurance benefits that was effective January 20, 2019. Iowa Workforce Development set Mr. Kleinberg's weekly benefit amount at \$257.00. Mr. Kleinberg has thus far made weekly claims for the six consecutive weeks between January 20, 2019 and March 2, 2019. When Mr. Kleinberg established his claim, he reported to Iowa Workforce Development that he was laid off due to a lack of work. U.S. Security Associates, Inc. is a base period employer for purposes of the unemployment insurance claim. Since Mr. Kleinberg established his claim for benefits, the employer has continued to have the same work available for Mr. Kleinberg, but Mr. Kleinberg has been unable to perform the essential duties of the employment. Because Mr. Kleinberg reported to Iowa Workforce Development that he was job-attached, but temporarily laid off, the weekly claim reporting system did not prompt Mr. Kleinberg to report weekly employer contacts. Mr. Kleinberg has not applied for any jobs since he established his claim for benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

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:

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.

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.

The evidence establishes that Mr. Kleinberg has been under a doctor's care, injured, unable to work, and unavailable for work since he established his claim for benefits. For that reason, benefits are denied effective January 20, 2019. The able and available disqualification continued as of the March 14, 2019 appeal hearing and will continue until Mr. Kleinberg is released to return to work. Mr. Kleinberg must meet all other eligibility requirements.

**DECISION:**

The February 18, 2019, reference 02, decision is affirmed. The claimant has not been able and available for work since establishing his claim for benefits. Benefits are denied effective January 20, 2019. The able and available disqualification continued as of the March 14, 2019 appeal hearing and will continue until the claimant is released to return to work. The claimant must meet all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs