

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A KOS
Claimant

APPEAL NO. 13A-UI-13543-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 06/30/13
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the December 5, 2013, (reference 03) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on January 14, 2014. Claimant participated. Employer did participate through Julie Coughlin, Branch Manager.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at CCB Packaging beginning on September 4, 2013 through November 4, 2013 when the client ended his assignment after the claimant experience multiple issues of passing out while on the job. The employer was willing to place him on other assignments once he provided a doctor's excuse indicating that it was safe for him to return to work. On November 7, the claimant provided the release that was requested by the employer that indicated he was physically able to return to work. The employer had no work for the claimant until December 5, 2013. The issue of whether the claimant failed to accept a suitable offer of work is not part of this case but the issue will be remanded to the UI claims section for an initial determination.

The claimant was and has been able to and available for work per his doctor despite his occasions of dizziness and fainting.

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.

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".

871 IAC 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.

Claimant has no medical restriction or other limitation on his employability effective November 4, 2013. Despite his incidents of fainting at work and dizziness, no physician has offered the opinion that he should not or cannot work. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 5, 2013, reference 03, decision is affirmed. The claimant is able to work and available for work effective November 4, 2013. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue as to whether the claimant refused a suitable offer of work is remanded to the claims section for an initial review and determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs