

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY F LAYTON
Claimant

TRADESMEN INTERNATIONAL LLC
Employer

APPEAL 21A-UI-14884-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant/appellant, Randy F. Layton, filed an appeal from the June 25, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2021. The hearing was held together with Appeal 21A-UI-14884-JC-T and Appeal 21A-UI-14886-JC-T. The claimant participated personally and was represented by Bruce H. Stoltze Jr., attorney at law. The employer, Tradesmen International LLC., participated through Cody Benge, general manager. The administrative law judge took official notice of the administrative records. Claimant Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work effective March 21, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment September 10, 2012. He last worked December 4, 2020 as a master carpenter. Claimant’s last assignment was in Sioux Falls, South Dakota. On December 7, 2021, employer stated it contacted claimant about an assignment based in Colfax, Iowa. Claimant stated he contacted the client, as is customary, and was told there was no work available. Claimant did not notify employer of his conversation with the client. Claimant was in a serious car accident on December 12, 2020. Employer contacted claimant on December 18, 2020 and learned of the car accident.

On March 16, 2021, Employer text messaged claimant regarding his work status. Claimant replied he had a doctor’s appointment the next day, that he was still feeling dizzy and that he hoped to be back in April. Claimant denied that his message meant he was unable to work. Claimant did not ever return back to the employer and claimant did not present evidence of being released by his doctor without restrictions for work.

Claimant further stated effective September 2, 2021, he would be eligible for social security.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective March 21, 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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.23(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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

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.* Assessing the credibility of the witnesses and reliability

of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was able and available for work effective March 20, 2021. Claimant's message to his employer on March 16, 2021 regarding a doctor's appointment, still being dizzy and planning to return to work in April supports that claimant was not able and available for work at that time. Claimant failed to furnish sufficient evidence to establish he was able to and available for work effective March 20, 2021. Therefore, regular benefits are denied.

The issue of whether claimant is able to and available for work effective September 5, 2021 due to retirement/receipt of social security benefits is remanded to the Benefits Bureau for investigation.

DECISION:

The unemployment insurance decision dated June 25, 2021, (reference 01) is AFFIRMED. The claimant is not able and available for work effective March 20, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of whether claimant is able to and available for work effective September 5, 2021 due to retirement/receipt of social security benefits is remanded to the Benefits Bureau for investigation.



Jennifer L. Beckman
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September 15, 2021
Decision Dated and Mailed

jlb/ol