

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSHUA W SEARS**

Claimant

**APPEAL 18A-UI-06128-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GATR OF CEDAR RAPIDS INC**

Employer

**OC: 09/24/17**

**Claimant: Appellant (4)**

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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:**

Joshua W. Sears (claimant) filed an appeal from the May 25, 2018, reference 07, unemployment insurance decision that denied benefits effective May 20, 2018 based upon the determination he was not able to or available for work due to surgery. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2018. The claimant participated. Gatr of Cedar Rapids, Inc. (employer) participated through HR Director Kelly Kern, Parts and Service Manager Tyler Jordan, and General Manager Curtis Patrick. No exhibits were offered into the record as the employer did not properly submit its proposed exhibits to the Appeals Bureau and the other party. The claimant objected to the request to postpone the hearing and the request was denied.

**ISSUE:**

Is 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: The claimant filed his claim for benefits effective September 24, 2017 and filed an additional claim for benefits on May 6, 2018. On May 23, the claimant underwent surgery. On June 4, the claimant's doctor released him to work without restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work from May 20 through June 2, 2018. Benefits are denied for that same period. The claimant is able to and available for work effective June 3, 2018. Benefits are allowed after that date, provided the claimant is otherwise eligible.

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 provides, in relevant part:

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.

...

(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 provides, in relevant part:

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.

...

(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.

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. The claimant was unable to work due to surgery effective May 20 through the week ending June 2, 2018 and benefits are denied during that period. The claimant is able to and available for work effective June 3, 2018. Benefits after that date are allowed, provided he is otherwise eligible.

**DECISION:**

The May 25, 2018, reference 07, unemployment insurance decision is modified in favor of the claimant. The claimant was not able to and available for work between May 20 and June 2, 2018; therefore benefits are denied during that time. He is able to and available for work effective June 3, 2018. Benefits are allowed after that date, provided the claimant is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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