

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALONZO W JACKSON

Claimant

APPEAL NO. 21A-UI-12018-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION

Employer

OC: 06/28/20

Claimant: Appellant (3)

Iowa Code § 96.6-2 – Timeliness of Appeal

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 23, 2021, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 20, 2021. The claimant did participate. The employer did participate through Michael Gerlach. The administrative law judge did take notice of the administrative record.

ISSUES:

Whether the appeal is timely?

Whether claimant is able and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on April 23, 2021. The claimant filed an appeal on April 26, 2021. The appeal was timely filed.

Claimant last worked for employer on August 20, 2020. After that date, claimant was on a two week paid leave until September 4, 2020 for Covid. Claimant reported this income when filing for unemployment. Claimant continued filing for unemployment after September 5, 2020 and did not respond to employer's requests for documentation supporting his ongoing absence from work. Employer then terminated claimant from work on October 5, 2020 after claimant missed multiple testing dates and did not return to work. Claimant was indicted for assault based legal problems on September 6, and was injured in a fight.

Claimant has been incarcerated since November 24, 2020 and has not been able to work since that date.

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.

Inasmuch as the claimant failed to return to work on September 5, 2020 and did not provide any documentation surrounding his lack of return to work to employer, claimant is not able and available to work since that date. On or around September 6, 2020 claimant was injured through a conflict and arrested at or around that time. Claimant has been consistently incarcerated since November 24, 2020. Benefits are withheld until such time as the claimant is released from incarceration.

DECISION:

The April 23, 2021, reference 03, decision is modified in favor of the employer/respondent. Although the appeal in this case was timely filed, claimant has not been able and available to work since September 6, 2020 and benefits are denied from that date.



Blair A. Bennett
Administrative Law Judge

July 28, 2021
Decision Dated and Mailed

bab/mh