

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT W CALLAHAN
Claimant

APPEAL 16A-UI-10251-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE CEC DUBUQUE WORKS
Employer

OC: 08/28/16
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 15, 2016, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on September 27, 2016. Claimant participated by and through his wife Loreen Callahan. Employer participated by Ryan Moode, Labor Relations.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off from work by employer for the week beginning August 21, 2016. The employer over the past 15 years or more would file unemployment claims for their employees during layoff periods. Over the past year the rules have changed and the employer is no longer able to assist employees during layoff periods as it had in the past.

Claimant is still employed by employer, and he is not currently filing claims. John Deere has periodic layoffs due to lack of work, and employees are allowed to apply for unemployment benefits during those dates. Claimant is not a part-time worker, and he is not partially unemployed. He is able to apply for benefits during any periods when he is laid off work by employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective August 28, 2016 because he is currently employed by this employer. He will be eligible for benefits if he is laid off work by employer during his benefit year.

Iowa Code § 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. 871-24.23(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 physician and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Benefits are currently withheld because claimant is working full-time for employer. He has not been filing claims, and he is not partially unemployed. Benefits shall be allowed if he is laid off again by employer.

DECISION:

The decision of the representative dated September 15, 2016, (reference 01) is modified in favor of the appellant. Claimant is currently not eligible to receive unemployment insurance benefits, effective August 28, 2016. He may be eligible if laid off by employer again during the claim year provided he meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs