

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERRY L ALEXANDER
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL NO. 14A-UI-12172-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/02/14
Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 21, 2014, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on December 15, 2014. Claimant participated personally. Employer participated by Victoria Benson, Human Resources Generalist.

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 is a seasonal worker, and typically works during the summer and fall months for employer. Claimant has some health issues that causes him discomfort when he works outside when it is cold. Claimant does not have other wages in his base period.

On or about November 28, 2014, claimant spoke with employer and explained that he would not be available for work again until the spring of 2015. Employer still had work available for claimant, and requested that he continue to work through December of 2014. Claimant refused to be on-call, and would not agree to work at that time.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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) and (3) provide:

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.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

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. Employment Appeal Board*, 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.*

Since claimant is unable to perform his work duties due to chronic and ongoing injuries, and the employer is not obligated to accommodate non-work-related injuries, he has not established his ability to or availability for work at this time. Benefits must be denied until such time as claimant has received a release from his physician which allows him to work outside in the cold, and/or until the beginning of seasonal employment in the Spring of 2015.

DECISION:

The decision of the representative dated November 21, 2014, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective November 2, 2014. Benefits must be denied and are withheld until such time as he obtains a full release to return to regular duties without restriction, offers his services to the employer, and it has no comparable, suitable work available.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css