

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**THOMAS J NETOLICKY**  
Claimant

**APPEAL NO. 190-UI-02381-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEI INC**  
Employer

**OC: 12/09/18**  
**Claimant: Appellant (2)**

Iowa Code §96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Thomas J. Netolicky, the claimant, filed an appeal from a representative's unemployment insurance decision dated January 4, 2019, reference 02, which denied unemployment insurance as of December 9, 2018, finding that the claimant was not able to perform work at that time due to injury. After due notice was provided, a telephone hearing was held on January 30, 2019. The claimant participated. The employer participated by Brian Woods, Office Manager. Claimant's Exhibit 1 was admitted into the hearing record.

On February 12, 2019, the administrative law judge decision was entered finding that the claimant's appeal was not timely, affirming the adjudicator's unemployment insurance decision dated January 4, 2019, reference 02. Mr. Netolicky filed a timely appeal with the Employment Appeal Board. On March 18, 2019, the Employment Appeal Board reversed and remanded the matter back to the Appeals Bureau, finding that the claimant's appeal was timely. The Employment Appeal Board directed the administrative law judge to issue a decision that provided the parties appeal rights based upon either the previous hearing record or an additional hearing if necessary. In compliance with the Employment Appeal Board's order, the administrative law judge reviewed the hearing record of the telephone hearing that was held on January 30, 2019 and enters the following Findings of Fact, Reasoning and Conclusions of Law, and Decision.

**ISSUE:**

The issue is whether Thomas J. Netolicky was able to perform work as of December 9, 2018, when he opened his claim for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Thomas J. Netolicky had been employed by DEI, Inc. until November 30, 2018, when the claimant was sent a termination notice from the employer. Mr. Netolicky was injured on April 13, 2018 in a work injury and had undergone surgery on June 10, 2018. Subsequently, Mr. Netolicky was released to return to work with work limits by his physician. Because DEI, Inc. did not have work which met the limitations imposed by Mr. Netolicky's physician, the claimant was assigned

to work at a non-profit organization as part of his rehabilitation program. Claimant was paid by DEI, Inc. although the services were performed at a Salvation Army location. The non-profit organization had work available that met the limitations imposed by Mr. Netolicky's physician. Mr. Netolicky was subsequently separated from DEI, Inc. based upon the employer's belief that Mr. Netolicky had not sufficiently attended the limited duty work that had been scheduled at the non-profit organization. Mr. Netolicky had only attended 187 hours of the 560 hours of rehabilitation type work that was available to him.

Mr. Netolicky opened a claim for unemployment insurance benefits with an effective date of December 9, 2018. At that time, the claimant's physician had released Mr. Netolicky to return to employment with few light duty limitations remaining. Mr. Netolicky actively began to seek employment with perspective employers, looking for employment that would be in compliance with his physician's work limitations. Claimant had obtained a release to return to general employment prior to opening his claim for unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes the claimant was able and available for work when he opened his claim for unemployment insurance benefits with an effective date of December 9, 2018. He was.

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.

Iowa Admin. Code r. 871-24.22(2) 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.

(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(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(3) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for 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 section 96.4(3).

In the case at hand, the evidence in the record establishes that Mr. Netolicky had been released to return to general employment by his physician prior to opening his claim for unemployment insurance benefits with an effective date of December 9, 2018. The evidence also establishes that Mr. Netolicky has been actively and earnestly seeking employment with perspective employers, looking for work that is within the medical limitations that had most recently been imposed by his physician.

The administrative law judge concludes that Mr. Netolicky is able and available for work effective December 9, 2018, and is eligible to receive unemployment insurance benefits providing he meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's unemployment insurance decision date January 4, 2019, reference 02, is reversed. Claimant is able and available for work effective December 9, 2018. Unemployment insurance benefits are allowed provided the claimant meets all other eligibility requirements of Iowa law.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs