

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SCOTT T HOLTERHAUS**  
Claimant

**APPEAL 16A-UI-09830-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNLIMITED DEVELOPMENT INC**  
Employer

**OC: 07/24/16**  
**Claimant: Appellant (4)**

---

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 29, 2016, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work effective July 24, 2016. The parties were properly notified about the hearing. A telephone hearing was held on September 26, 2016. Claimant participated. Employer participated through human resource manager Coryn Armstrong. Claimant's Exhibit A was received.

**ISSUE:**

Is the claimant able to work and available for work effective July 24, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time maintenance worker in a nursing home through July 27, 2016. See 16A-UI-09222-JP-T. He had a non-work related injury to his right foot and had surgery on May 14, 2016. He was released to work with restrictions on Wednesday, August 3, 2016, and without restrictions on September 14, 2016. He has been seeking work consistent with his training and experience in sales and indoor light construction (painting, carpentry trim, tile and flooring).

**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 until the week effective July 31, 2016.

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.

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.

Since the employment ended on July 27, 2016, claimant was no longer obligated to return to employer upon his medical release to offer his services. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Since he has performed indoor jobs consistent with the medical restrictions within the work history, he is considered able to work even if he could not yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of the first release with restrictions on August 3, 2016. Because he would be able to work the majority of that week, benefits are allowed effective July 31, 2016. Claimant is on notice that he must conduct *at least two* work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The August 29, 2016, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective July 31, 2016. Benefits are allowed, provided he is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs