

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN L SNELSON
Claimant

APPEAL NO. 16A-UI-13764-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIBLING OF KEOKUK INC
Employer

OC: 11/27/16
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kevin Snelson filed a timely appeal from the December 21, 2016, reference 01, decision that denied benefits effective November 27, 2016, based on the claims deputy's conclusion that Mr. Snelson was not able to work and available for work within the meaning of the law. After due notice was issued, a hearing was held on January 20, 2017. Mr. Snelson participated. Ed Hartweg, General Manager, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following agency administrative records: database readout (DBRO) and continued claims (KCCO).

ISSUES:

Whether Mr. Snelson has been able to work and available for work within the meaning of the law since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sibling of Keokuk, Inc., owns and operates a McDonald's restaurant in Keokuk. Ed Hartweg is General Manager of the restaurant. Kevin Snelson began his employment with the company in 2009 and last performed work for the employer in April 2016. Up to that time, Mr. Snelson worked as a part-time crew person in the grill area. Mr. Snelson worked 25 hours per week. Mr. Snelson's work duties included cooking hamburger patties and other meat, making sandwiches and making French fries. Mr. Snelson's duties also involved handling boxes weighing up to 40 pounds. The work involved bending and twisting. Mr. Snelson performed his work duties on a tile floor surface. Given the nature of the business enterprise, the floor surface could become slippery and hazardous. For that reason, the employer required employees to wear slip-resistant footwear.

In April 2016, Mr. Snelson went off work due to his need to undergo and recover from back surgery. Prior to November 8, 2016, Mr. Snelson's doctor had not released Mr. Snelson to perform any type of work. The parties treated Mr. Snelson's time away from the restaurant as an approved leave of absence.

On November 8, 2016, Mr. Snelson's doctor provided Mr. Snelson with a medical excuse that stated as follows:

Kevin Snelson was seen today at University of Iowa Hospitals and Clinics for a medical appointment.

Kevin may return to work at this time. He should not lift more than 20lbs at a time. Also, he should not work on slippery floors. His duties should not include significant bending or twisting.

Finally, Kevin should work only 15 hours per week until we evaluate him again in three months.

Mr. Snelson provided the medical excuse to Deena Mast. Ms. Mast owns the restaurant with her husband, Steven Mast, and their daughter, Emily Mast. Emily Mast's is designated an assistant manager at the restaurant. Deena Mast initially suggested a willingness to put Mr. Snelson to work in the grill area or in the French fry area 10 hours per week for a few weeks.

The employer subsequently concluded that it did not in fact have work that would comply with the medical restriction against working on a slippery floor. Work in the kitchen could easily become work on a slippery surface due to grease and other spills. Work in the dining room area could also easily become work on a slippery surface due to spills and mopped floors. In addition, all of the work duties in the restaurant involved some amount of bending and twisting.

When the employer did not return Mr. Snelson to the work schedule, Mr. Snelson established the unemployment insurance claim that was effective November 27, 2016. Mr. Snelson has not looked for other employment and instead hopes to return to the part-time employment at the restaurant. Mr. Snelson made weekly unemployment insurance claims for the first five consecutive weeks of his claim, but then discontinued making claims because he forgot to make them.

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 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. 871-24.22(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(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.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Mr. Snelson has not been able to work or available for work within the meaning of the law since he established his claim for benefits. Mr. Snelson has been interested only in working for this particular employer. However, the employer reasonably concluded that it did not have work that would comply with the restrictions set forth in the November 8, 2016 medical excuse. While the medical excuse states that Mr. Snelson may return to work, it then goes on to list things that Mr. Snelson cannot do. The employer reasonably concluded that, given the nature of its business, any work it might have would include work on slippery floors, along with twisting and bending. The constellation of restrictions that currently apply to Mr. Snelson's ability to work and availability for work prevent him from meeting the eligibility requirements. Benefits are denied effective November 27, 2016. The disqualification remains in effect.

DECISION:

The December 21, 2016, reference 01, decision is affirmed. The claimant has not been able to work and available for work since establishing he established his claim for benefits. Benefits are denied effective November 27, 2016. The disqualification remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs