

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN STURGILL
Claimant

KINZLER CONSTRUCTION SERVICES INC
Employer

APPEAL 22A-UI-01885-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/26/21
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 16, 2021 (reference 04) unemployment insurance decision that found that the claimant was disqualified from receipt of benefits based upon his not being able to and available for work effective November 21, 2021. The parties were properly notified of the hearing. A telephone hearing was held on February 11, 2022. The claimant, John Sturgill, participated personally. The employer, Kinzler Construction Services Inc, did not participate.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full time as an installer beginning in 2016. In mid-August 2021, claimant's medical provider removed claimant from work due to a back injury. Claimant's doctor allowed claimant to work with restrictions up to the date of his surgery, which was November 7, 2021. Claimant's employer did not have work available for him with the doctor's restrictions, so claimant did not work. Claimant's doctor also released him to work after his surgery with the same restrictions. Claimant's employer did not have work available for him with the restrictions. Claimant's doctor released him back to work with no restrictions on January 10, 2022. In mid-December, claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective November 21, 2021.

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.

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 medical practitioner 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. 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment

benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

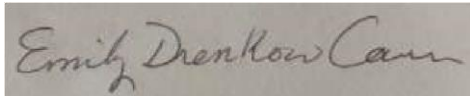
Inasmuch as the medical condition was work-related and the treating physician has released the claimant to return to work, he has established his ability to work effective November 21, 2021.

DECISION:

The December 16, 2021, (reference 04) unemployment insurance decision is reversed. The claimant is able to work and available for work effective November 21, 2021. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of claimant's separation from employment shall be remanded for investigation and determination.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 2, 2022
Decision Dated and Mailed

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