

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SPENCER DRISH
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 22A-UI-01228-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/16/21
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 1, 2021 (reference 02) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she was not able to perform work. The parties were properly notified of the hearing. A telephone hearing was held on February 4, 2022. The claimant, Spencer Drish, participated personally. The employer, Express Services Inc, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record including the fact finding documents. Claimant updated his mailing address. Claimant's Exhibits A and B were offered and received into the record.

ISSUE:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time for this employer from August 2020 until September 2021. He is no longer employed with this employer. Claimant was working full-time for this employer.

Claimant had surgery on his shoulder and was placed in a shoulder immobilizer. His doctor released him back to work without restriction. This information was communicated to his supervisor; however, his employer refused to allow claimant to return. Claimant separated from employment in September 2021.

There has not been an initial investigation and determination with regard to the claimant's separation from employment by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective August 1, 2021.

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", subparagraph 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".

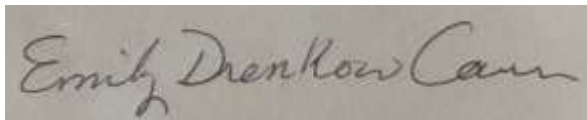
To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken 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)).

Because the medical condition was not work-related and the treating physician has released the claimant to return to work, he has established his ability to work.

DECISION:

The September 1, 2021 (reference 02) unemployment insurance decision is reversed. The claimant is able to and available for work. Benefits are allowed, provided he is otherwise eligible.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Emily Drenkow Carr
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March 4, 2022
Decision Dated and Mailed

ed/scn