

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY D HALL
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 18A-UI-10774-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/30/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2018 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to illness. The parties were properly notified of the hearing. A telephonic hearing was held on November 14, 2018. The claimant, Randy D. Hall, participated and was represented by Brian Ulin, non-attorney representative. Brian Ulin also provided testimony on claimant's behalf. The employer, Swift Pork Company, did not register a telephone number at which to be reached and did not participate in the hearing. Claimant submitted documentation but it was not admitted as an exhibit for the hearing.

ISSUE:

Is the claimant able to work and available for work effective September 30, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was working most recently as a fork truck driver for JBS Swift. Claimant was placed on a one-year leave of absence from his position after he slid the forks of his fork truck underneath another vehicle. The employer considered this incident a major safety violation, and they pulled his fork truck driving license for one year. Claimant has a union grievance pending regarding this incident.

Claimant has been diagnosed with foot drop syndrome. This affects both of his knees. He is unable to stand for more than two hours at a time, and he is prohibited from squatting, bending, or using the stairs. Claimant was able to perform all of his duties as a fork truck driver. However, claimant explained, he cannot simply go out and apply for another fork truck driving position. All of the available fork truck driving positions are within union shops, and he would have to work his way up from a laborer position and eventually bid into these jobs. Due to his physical restrictions, claimant is not able to perform the duties of a laborer. Additionally, claimant explained that while he could perform any job that allows him to sit, his background is

in labor and he does not have computer skills. Claimant has applied for and received short-term disability benefits while on his leave of absence from JBS Swift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not able to and available for work. Benefits are withheld.

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(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. 871-24.22(1)b 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.

...

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant has not established that he is physically able to do work that he can obtain in the available labor market. While claimant is capable of performing the job from which he is on a leave of absence, he is not currently permitted to perform that specific job. Additionally, claimant himself acknowledges that fork truck driving positions are not available to the open labor market. Rather, these positions are only open internally within businesses to employees with enough seniority to bid into them. Claimant has not identified any other work that he is physically capable of performing. Moreover, claimant is currently receiving short-term disability benefits, also indicating he is not physically able to work. Accordingly, benefits are withheld.

DECISION:

The October 26, 2018 (reference 03) unemployment insurance decision is affirmed. Claimant has not established that he is physically able to work. Accordingly, benefits are withheld effective September 30, 2018.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn