

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVAN J BIRCH
Claimant

JMS TRANSPORTATION CO INC
Employer

APPEAL 19A-UI-00427-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/16/18
Claimant: Appellant (4)

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 January 7, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant not able to work due to illness. The parties were properly notified of the hearing. A telephonic hearing commenced on January 31, 2019, and was continued to February 11, 2019. The claimant, Devan J. Birch, participated. The employer, JMS Transportation Company, Inc., participated through Mackenzie Kimm, Human Resource Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective December 16, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a truck driver, from July 18, 2016, until December 27, 2018, when he was discharged due to absenteeism. Claimant was ill for an extended period of time due to asthma and bronchitis. He testified that he finally felt well enough to work on Friday, January 18, 2019.

Claimant has experience operating a tractor-trailer, and he has applied for jobs in this area. Claimant also has experience in management, as a chef, as a CNA, and as a pharmacy technician. He has applied for an array of jobs across available fields, based on his experience.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant became able to and available for work effective January 21, 2019. Benefits are allowed from that week forward, provided he is otherwise eligible.

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)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.

In this case, claimant testified that he first felt physically able to work again on Friday, January 18, 2019. Based on this testimony, he was not able to work between his original claim date and the end of that week. Therefore, he cannot establish that he was able to and available for work during that time period. The administrative law judge finds claimant was able to and available for work effective January 20, 2019. Benefits are allowed from that week forward, provided he is otherwise eligible.

DECISION:

The January 7, 2019, (reference 01) unemployment insurance decision is modified in favor of claimant/appellant. Claimant is able to and available for work effective January 20, 2019. Benefits are allowed, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn