

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NICHOLAS R SUER**  
Claimant

**APPEAL 17A-UI-08632-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/22/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 16, 2017, (reference 04), unemployment insurance decision that denied benefits based upon not being able to or available for work the week-ending May 20, 2017. After due notice was issued, a telephone conference hearing was scheduled to be held on September 11, 2017. Claimant participated.

**ISSUE:**

Is the claimant able to work and available for work effective May 14 through May 20, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked in his landscaping job on Monday, May 15 and Tuesday, May 16. The employer gave him the option of working or not on Wednesday, May 17. He chose not to work due to not feeling well due to the heat. That evening he was admitted to the hospital where he remained until 11 a.m. on Friday, May 18, 2017. He called the employer and was told no one was working that afternoon. He usually reported at 7 a.m. each day and the number of hours worked each day varied. He returned to work the following week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work, and made an earnest search for work for the period in question.

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 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.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant opted not to work on Wednesday, when work was available because he was ill and was unable to work. On Thursday and Friday, he was hospitalized and was not able to work. Because he was not able to or available for work the majority of the work week, he was not considered unemployed or eligible for unemployment insurance benefits.

**DECISION:**

The August 16, 2017, (reference 04) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective May 14 through May 20, 2017. Benefits are withheld for that week.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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