

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIO A HARRIS
Claimant

SANDHU GROUP OF COMPANIES INC
Employer

APPEAL 18A-UI-02908-DG-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/21/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 1, 2018, (reference 03) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on March 30, 2018. Claimant participated personally and was represented by Randall P. Schueller, Attorney at Law. Employer participated by Dalgic Sandhu, General Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer in July of 2016. On June 29, 2017, claimant sustained an injury while he was working for employer. Claimant told his manager that he got hurt while working, and he was allowed to leave work that day.

Claimant sought medical treatment at a Unity Point clinic in Des Moines. Claimant was placed on medical restrictions by a physician on June 29, 2017, which did not allow him to work until July 20, 2017. After that date he was available to work without any restrictions.

Claimant returned to his employer on July 20, 2017, and spoke with Ben, who was the store manager at the time. Claimant was told by his manager that there was no work available for him, and claimant reasonably believed that his position had been filled by employer while he was off work because of his injury. Claimant was not placed back on the schedule, and there was no work available to him after that date.

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 January 21, 2018.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective January 21, 2018.

DECISION:

The decision of the representative dated March 1, 2018, (reference 03) is reversed. Claimant is eligible to receive unemployment insurance benefits, effective January 21, 2018, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn