

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA L BERRY
Claimant

HERITAGE GROUP LLC
Employer

APPEAL 20A-UI-12273-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/03/19
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Joshua Berry (claimant) appealed a representative's September 23, 2020, decision (reference 04) that concluded ineligibility to receive unemployment insurance benefits because she was ill and unable to work with Heritage Group (employer) as of March 29, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 7, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired and scheduled to start work for the employer in April of 2020, as a full-time floating janitor. He became ill and quarantined for two weeks. After two-weeks he called and left messages for the employer but the employer did not respond.

On or about May 1, 2020, the claimant went to his physician for a follow-up appointment. She told him that he was a high-risk individual and he should not be working. The claimant now has eye problems and memory loss. He is scheduled for magnetic resonance imaging (MRI) on December 21, 2020. The claimant has been in quarantine since April 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

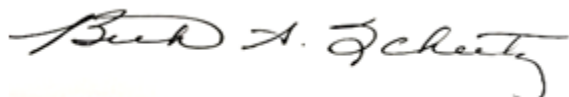
(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant has been in quarantine to stay safe from Covid-19. To keep him safe from a deadly virus, his physician quarantined him from the workplace. He is not able and available for work while quarantining. The claimant is disqualified from receiving unemployment insurance benefits as of March 29, 2020.

DECISION:

The representative's September 23, 2020 decision (reference 04) is affirmed. The claimant is not able and available for work. He is disqualified from receiving unemployment insurance benefits as of March 29, 2020.

Please notify the department immediately if the conditions change regarding your ability to work and you believe the disqualification can be removed.



Beth A. Scheetz
Administrative Law Judge

December 14, 2020
Decision Dated and Mailed

bas/mh