

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK MENEGAY

Claimant

APPEAL 21A-UI-06406-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/06/20

Claimant: Appellant (2)

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 February 16, 2021, (reference 03) unemployment insurance decision that denied benefits based upon not being able to and available for work for the week effective December 6, 2021, due to restrictions from his physician. After due notice was issued, a telephone conference hearing was scheduled to be held on May 7, 2021. Claimant participated. Exhibit A was admitted into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending December 6, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant last worked as an insurance adjuster for Farmer's Automobile Insurance in July 2020. This resulted in him taking an extended medical leave. He separated from this employment because he did not return from his medical leave.

Starting in July 2020, the claimant has a combination of lower gastrointestinal and respiratory issues. The claimant could not get in to his doctor until October 2020. The claimant's respiratory issues were diagnosed as sinusitis from a staphylococcus November 2020. The gastrointestinal issues for the most part resolved on December 3, 2020. The claimant still experiences the symptoms, but he is able to work despite uncomfortable. The claimant provided a copy of a doctor's note written by Dr. Michael Nicholson on February 26, 2021 that released him to return to work on December 3, 2020. (Exhibit A)

Since he has been released to return to work, the claimant has been looking for work. The claimant applied for a wide variety of full-time jobs in central Iowa like at the US Postal Office, project manager positions for various construction companies and for the City of Ankeny.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective for the week ending December 6, 2021.

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. 871-24.22(2) provides:

Benefit 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. 871-24.23 (1) and (35) provide:

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.

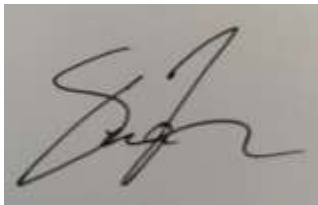
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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.

The claimant was previously disqualified under Iowa Admin. Code r. 871-24.23 (1) and (35). The claimant was released to return to work without restrictions on December 6, 2020. The claimant is able and available effective December 6, 2020. Benefits are granted.

DECISION:

The December 6, 2021, reference 03, unemployment insurance decision is reversed. The claimant is able to work and available for work effective December 6, 2021. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
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May 28, 2021
Decision Dated and Mailed

smn/ol