

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONALD M HOSTENG**  
Claimant

**APPEAL 19A-UI-03616-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 02/24/19  
Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

On May 2, 2019, the claimant filed an appeal from the April 24, 2019, (reference 03) unemployment insurance decision that denied benefits based on a determination that he is unable to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on May 21, 2019. Claimant participated and testified.

**ISSUE:**

Is the claimant able to and available for work effective February 24, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last employed as a full-time farm manager. Claimant was separated from that position on February 22 or 23, 2019, because the business closed. Claimant had worked in that position approximately 15 years. His job duties consisted primarily of office work or driving around monitoring other employees. On November 1, 2018 claimant began chemotherapy treatments. Claimant initially experienced some mild side effects, but nothing that interfered with his ability to work. No restrictions have been placed on claimant's ability to work and his only availability restriction is that he needs five hours off once every two weeks to receive his treatment. Claimant continues to search for sedentary work, consistent with his prior work history and experience, making at least two job contacts every week. Claimant did travel out of town the week of May 12, 2019 and therefore did not perform any job searches that week.

**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, and made an earnest search for work effective February 24, 2019, with the exception of the week ending May 18, 2019.

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:

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. 871-24.23(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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek 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. Employment Appeal Board*, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

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 is currently receiving chemotherapy treatments. Claimant began treatment on November 1, 2018, when he was still employed. Claimant was able to remain employed and perform his regular job duties until he was laid off due to lack of work in February 2019. Claimant does not have and has not had any medical restrictions placed on his ability to perform work. He is applying for work that is consistent with his experience, education, and prior work history. Though claimant does need five hours off, once every two weeks, to receive treatments he remains available to work the majority of the work week. Claimant has established he is able to and available for work effective February 24, 2019. Benefits are allowed.

Claimant also gave testimony that he was out of town the majority of the week ending May 18, 2019 and therefore did not complete his work searches for the week in question. As claimant was out of town, he was not available for week the week ending May 18, 2019. Benefits are withheld for the week ending May 18, 2019 only.

**DECISION:**

The April 24, 2019, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective February 24, 2019, but was not available for work the week ending May 18, 2019. Benefits are withheld for the week ending May 18, 2019 only and are otherwise allowed effective February 24, 2019. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs