

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

DANTE FRAZIER
Claimant

APPEAL NO. 18A-UI-06660-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

I WIRELESS
Employer

OC: 05/13/18
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Dante Frazier filed a timely appeal from the June 7, 2018, reference 05, decision that denied benefits effective May 13, 2018, based on the Benefits Bureau deputy's conclusion that Mr. Frazier was under the care of a physician, was unable to perform work, and therefore did not meet the availability requirement. After due notice was issued, a hearing was held on July 3, 2018. Mr. Frazier participated personally and was represented by attorney Christopher Stewart. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A and Department Exhibits D-1 through D-4 were received into evidence.

ISSUE:

Whether Mr. Frazier has been able to work and available for work within the meaning of the law since he established the original claim for benefits that was effective May 13, 2018.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dante Frazier established an original claim for benefits that was effective May 13, 2018.

Mr. Frazier's most recent employer was I Wireless. Mr. Frazier worked for I Wireless as a full-time Wireless Consultant. Mr. Frazier last performed work for I Wireless in December 2017. On December 15, 2017, Mr. Frazier suffered injury to his hip and lower back in an off-duty automobile accident. Mr. Frazier requested a medical leave of absence under the Family and Medical Leave Act (FMLA) so that he could recover from his injuries. The employer approved Mr. Frazier's request for FMLA leave. The employer subsequently severed the employment relationship effective March 12, 2018, after the FMLA leave period expired. At that time, Mr. Frazier had not been released by his doctor to return to work. At that time, Mr. Frazier's doctor indicated in an FMLA certification form that Mr. Frazier was not expected to be released to return to work until June 15, 2018.

Prior to I Wireless' decision to sever the employment relationship, Mr. Frazier and his doctor provided the employer with an updated FMLA Certification of Health Care Provider for

Employee's Serious Health Condition, dated March 7, 2018. In the certification form, Mr. Frazier's doctor, Edward Steinmann, D.O., indicated that Mr. Frazier's medical condition began on December 15, 2017 and was expected to last six to nine months. Dr. Steinmann indicated that he had treated Mr. Frazier on December 20, 2017, December 28, 2017, January 21, 2018, and February 12, 2018. Dr. Steinmann indicated that he had referred Mr. Frazier for orthopedic surgery. Dr. Steinman indicated that Mr. Frazier was unable to perform any and all of the duties associated with his Wireless Consultant employment as of March 7, 2018. Dr. Steinmann indicated that, "He has Back and left hip/leg Pain marked alteration in gait and strength." Dr. Steinmann indicated that Mr. Frazier would be incapacitated continuously from December 15, 2017 to June 15, 2018. Dr. Steinmann indicated that Mr. Frazier would need to participate in treatment two to six times per month.

At the time Mr. Frazier established his unemployment insurance claim that was effective May 13, 2018, he had most recently seen Dr. Steinmann at the end of March 2018. Dr. Steinmann had referred Mr. Frazier to other medical professionals for assistance in determining why Mr. Frazier's condition and gait were not improving. Mr. Frazier underwent an MRI. Mr. Frazier has since continued to use a cane. Mr. Frazier reports that he cannot stand for lengthy periods or walk significant distance without pain. Mr. Frazier cannot sit for longer than an hour at a time. Mr. Frazier continues to take prescription hydrocodone once per day for pain.

On June 6, 2018, Mr. Frazier participated in a fact-finding interview that addressed whether he was able to work and available for work. At that time, Mr. Frazier provided the following statement, according to the Benefits Bureau deputy's notes:

Yes, I was on a non-work related FMLA medical leave since 12-15-17 because I was in a car accident on 12-15-17 going to work. I [am] still under a doctor's care and will not be released by my doctor until 06-15-18 and I could only find a work that does not require me to go up and down the stairs. They let me go because I was not able to return after FMLA ran out as of 03-01-18.

Prior to July 3, 2018, Mr. Frazier had not provided Iowa Workforce Development with a more recent medical professional statement than the March 7, 2018 FMLA certification. On July 3, 2018, Mr. Frazier submitted to the Appeals Bureau a signed stated from Dr. Steinmann, dated June 29, 2018. That statement reads as follows:

Dante Frazier has suffered an injury to his left hip with resultant pain and limp.

Dante may work with the following restrictions: he will need a "handicap" parking space to limit walking to and from work. He will need sa [sic] "sit down" type of job. He has no restrictions on use of language/ thinking skills or use of his hands arms. He must be given reasonable accommodation to use the restroom due to pain and limp. Finally, he will need frequent breaks from siting [sic] to move/stretch his left leg due to his pain.

Since Mr. Frazier established the original claim for unemployment insurance benefits that was effective May 13, 2018, he has made weekly claims. For each weekly claim, Mr. Frazier has reported making two or more job contacts. Mr. Frazier did not have his work search log with him at the time of the July 3, 2018 appeal hearing. Mr. Frazier was able to name only two prospective employer's with whom he had made contact. Mr. Frazier had made contact with a Days Inn Ramada during the week that ended June 2, 2018. Mr. Frazier had made contact with Aldi's regarding a cashiering job during the week that ended June 9, 2018. Mr. Frazier has

focused his job search on hotel front desk jobs, but also has applied for a couple telemarketing jobs. Mr. Frazier is a high school graduate and has completed some college coursework.

REASONING AND CONCLUSIONS OF LAW:

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.

The weight of the evidence in the record establishes that Mr. Frazier has not been able to work or available for work within the meaning of the law since he established the original claim for benefits effective May 13, 2018. The March 7, 2018, medical documentation indicated that Mr. Frazier would be incapacitated at least through June 15, 2018. Mr. Frazier confirmed at the June 6, 2018 fact-finding interview that he would be medically unable to work and not released by his doctor to work until June 15, 2018. Mr. Frazier did not provide Iowa Workforce Development with updated medical information until July 3, 2018, when he submitted the June 29, 2018 statement from Dr. Steinmann. That statement sets forth significant restrictions and pain management concerns that would a reasonable person to conclude that Mr. Frazier continued to be unable to perform full-time work. The other evidence, including Mr. Frazier's testimony regarding his ongoing pain management issues, point to the same conclusion that Mr. Frazier is still unable to work full-time, with or without reasonable accommodations. Mr. Frazier presented insufficient evidence to establish that he has engaged in an active and earnest search for work that his is capable of performing in light of his present medical condition. Mr. Frazier is under the erroneous belief that hotel front desk jobs area sedentary in nature and has focused his job search on such work. For the above reasons, the administrative law judge concludes that Mr. Frazier has not met the able and available eligibility requirements since he established his unemployment insurance claim and is therefore not yet eligible for unemployment insurance benefits. Benefits are denied effective May 13, 2018. The able and available disqualification continued as of the July 3, 2018 appeal hearing.

DECISION:

The June 7, 2018, reference 05, decision is affirmed. The claimant has not met the able and available eligibility requirements since he established the original claim that was effective May 13, 2018. Benefits are denied effective May 13, 2018. The able and available disqualification continued as of the July 3, 2018 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs