

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARK T GUTZEIT**  
Claimant

**DEDICATED LOGISTICS INC**  
Employer

**APPEAL 21A-UI-00607-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/20  
Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 18, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2021, at 8:00 a.m. Claimant participated with his attorney Tim LaPoint. Employer participated through Mary Monitor, Human Resources Generalist, and Kevin Eukel, Manager of Claims and Risk Management. No exhibits were admitted.

**ISSUE:**

Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment as a full-time Delivery Driver for Dedicated Logistics in July 2017. Claimant last performed work for employer on February 14, 2020, when he slipped and fell at work injuring both shoulders. Claimant received medical attention. On June 8, 2020, claimant's physician released claimant as having reached maximum medical improvement; the physician outlined permanent restrictions against lifting greater than 25 pounds and extended reaching or grasping. The physician added a restriction against pushing or pulling.

Claimant could not perform his regular job duties as a delivery driver within the restrictions. Employer's workers compensation carrier arranged for claimant to work at the Salvation Army. Employer believed the job duties at Salvation Army were within claimant's restrictions. At the Salvation Army, claimant was required to put clothes on hangers and place the hangers on a clothes rack. This job was not within claimant's restriction against extended reaching and grasping. The job caused claimant pain. Claimant informed Salvation Army and employer's workers compensation carrier of the issue. Employer did not offer claimant any other work within his restrictions.

Claimant filed an initial claim for unemployment insurance benefits effective September 6, 2020.

On November 10, 2020, claimant had surgery on his right shoulder. Claimant's physician told claimant that he would not be able to work for three months after the surgery. At the time of the

hearing, claimant had to complete four additional weeks of therapy. Claimant has not been released by his physician to return to work post-surgery.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

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), (2) provide, in pertinent part:

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.

(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(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.

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 sustained a work-related injury and received medical attention. Claimant's physician released him to return to work with restrictions effective June 8, 2020. Claimant was able to and available for work within those restrictions. Employer has no work available within the restrictions. Therefore, benefits are allowed effective September 6, 2020.

Claimant had surgery on November 10, 2020 and has not yet been released to return to work by his physician. Claimant is not able to and available for work with or without restrictions. Therefore, benefits are denied effective November 10, 2020.

**DECISION:**

The November 18, 2020 (reference 01) unemployment insurance decision is amended in favor of appellant. Claimant is able to and available for work from September 6, 2020 until November 9, 2020. Benefits are allowed from September 6, 2020 until November 9, 2020, provided claimant is otherwise eligible. Claimant is not able to and available for work effective November 10, 2020. Benefits are denied effective November 10, 2020.



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February 25, 2021  
Decision Dated and Mailed

acw/mh