

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON V SKILLEN
Claimant

SUKUP MANUFACTURING CO
Employer

APPEAL 22A-UI-05757-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/09/22
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jason V Skillen, the claimant/appellant, filed an appeal from the February 23, 2022, (reference 07) unemployment insurance (UI) decision that denied benefits as of January 9, 2022 because Mr. Skillen was not able to perform work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on April 14, 2022. Mr. Skillen participated personally. Judith O'Donohue, attorney, represented Mr. Skillen. The employer participated through Cassandra Hecker, human resources generalist. Margaret Standish-Bruce, associate corporate counsel, represented the employer. The administrative law judge took official notice of the administrative record. Claimant's Exhibits A was admitted as evidence.

ISSUES:

Is Mr. Skillen able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Skillen began working for the employer on May 24, 2021. He worked as a full-time sheer press person. His employment ended on August 6, 2021.

Mr. Skillen has had ongoing medical issues with his feet for some time, including before he began working for the employer. On, or about June 11, the employer provided Mr. Skillen and other employees in his department with new floor mats because the previous floor mats were worn out. Sometime in July 2021, Mr. Skillen went to a Mercy medical clinic for issues with his feet because he could not stand on his feet due to swelling. Mr. Skillen's job required him to stand for prolonged periods. The clinic Mr. Skillen went to is attached to the one of the employer's buildings but operates independently and does not share information with the employer, except to the extent that a patient may consent to information sharing. Mr. Skillen assumed the clinic was the employer's in-house clinic and that the clinic would share information with the employer without any action on his part. Mr. Skillen told his supervisor about the doctor visit. Mr. Skillen did not file a worker's compensation claim and he did not request to see the employer's worker's compensation doctor.

The Mercy clinic doctor sent Mr. Skillen to a specialist. Mr. Skillen told his supervisor about the specialist's appointment. The specialist advised Mr. Skillen to not stand on his feet for prolonged periods. The specialist wrote a doctor's note saying the same. Mr. Skillen picked up the specialist's note at the Mercy clinic. Mr. did not give the specialist's note to the employer because he assumed the clinic would share the information in the specialist's note with the employer. No one at the clinic told Mr. Skillen that they would share the information in the specialist's note with the employer. The clinic did not share the information in the specialist's note with the employer. However, Mr. Skillen did talk with his supervisor about his doctor visits. The supervisor told Mr. Skillen that there were no other jobs with the employer available to him. On Monday, August 2, Mr. Skillen told his supervisor that Friday, August 6 would be his last day because he could not stand because of medical issues with his feet. Mr. Skillen's employment ended on August 6, 2021. Mr. Skillen did not file a worker's compensation claim. Mr. Skillen's eligibility for benefits based on his separation from this employer is addressed in Appeal 22A-UI-05756-DZ-T.

Mr. Skillen was unemployed from August 7 until he began working at TrinityRail Maintenance Services in December 2021. He worked for that employer as a full-time maintenance person moving railcars. Mr. Skillen was separated from employment with that employer on January 11, 2022. From the time the specialist gave Mr. Skillen the doctor's note through the hearing date, Mr. Skillen's doctor continues to advise him to not stand on his feet for prolong periods.

REASONING AND CONCLUSIONS OF LAW:

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

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(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) 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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. 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.

In this case, Mr. Skillen is able to and available for work as of January 9, 2022. Although Mr. Skillen was not able to work in the full-time sheer press person position standing on his feet for prolonged periods, he is able to work in some gainful employment. Mr. Skillen's work as a maintenance person moving railcars for employer TrinityRail Maintenance Services is evidence of his ability to work in some gainful employment. Since Mr. Skillen is able to and available for work as of January 9, 2022, benefits are allowed as of that date.

DECISION:

The February 23, 2022 (reference 07) decision is REVERSED. Mr. Skillen is able to and available for work as of January 9, 2022. Benefits are allowed.



Daniel Zeno
Administrative Law Judge
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April 29, 2022
Decision Dated and Mailed

dz/mh