

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATHAN A CHIATTELLO
Claimant

LABOR READY MIDWEST INC
Employer

APPEAL NO. 14A-UI-10058-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/08/14
Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 17, 2014, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 16, 2014. Claimant participated personally. Employer participated by Nicole Petersmith, Customer Service Representative. Employer's Exhibit One was admitted into evidence. The parties waived notice of the able and available for work issue that was decided in the reference 05 case that was appealed by claimant in this matter.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant is looking for work as a full-time chemist. Employer is not able to provide that type of employment for claimant. Claimant did accept some part-time assignments to supplement his income from the savings which he had accumulated when he was working in his field prior to being laid off.

Claimant was seeking employment in his field, and did not always accept menial labor assignments that were posted by employer. Claimant would consider where he had to go for the job, and then he would decide if the cost of transportation made the temporary position prohibitive. Claimant was not seeking full-time menial labor, and he made that clear to employer.

Claimant was also considering starting his own business as a chemist. He had told employer that he was considering that option since employer was not able to provide him work in his field. Claimant was over-qualified for the work the temporary employment agency was offering, and he wanted to find work as a chemist. Claimant never did become self-employed, and did not earn any income from self-employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 claimant has established that he is able and available to work. He was never self-employed, and he is still seeking work in his field. Claimant is not required to accept full-time work that is not in his field. Benefits shall be allowed effective August 24, 2014.

DECISION:

The decision of the representative dated September 17, 2014, reference 05 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective August 24, 2014, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs