

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MALCOM BROWN
Claimant

BEATON INC
Employer

APPEAL 20A-UI-08460-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1/R)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Malcom Brown (claimant) appealed a representative's July 7, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits because he is not able to perform work with Beaton (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the 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 that: The claimant worked for the employer from June 2019, to April 2020. The employer is a Burger King. In April 2020, the claimant gave the employer a note saying the claimant was at high risk to catch Covid-19 and was restricted from working. The claimant stopped working. The claimant has no doctor's note indicating he can return to work.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. His weekly benefit amount was determined to be \$518.00. The claimant received benefits from April 12, 2020, to the week ending June 27, 2020, for a total of \$5,678.00 in state unemployment insurance benefits after the separation from employment. He also received \$6,600.00 in Federal Pandemic Unemployment Compensation for the eleven-week period ending June 27, 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

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. 871-24.23(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.

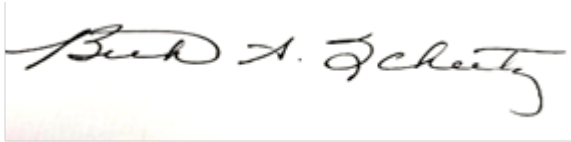
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant's doctor restricted the claimant from working. He is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits beginning April 12, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's July 7, 2020 decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits as of April 12, 2020, because of a medical inability to work for the employer.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

bas/scn