

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS N O'BANNON
Claimant

APPEAL 18A-UI-11874-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGHWAY SEVEN SERVICE CENTER INC
Employer

**OC: 10/21/18
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Douglas N. O'Bannon (claimant) filed an appeal from the December 4, 2018, reference 03, unemployment insurance decision that denied benefits for the week ending October 27, 2018 based on the determination he was in the hospital and unable to work. After due notice was issued, a telephone conference hearing was held on December 27, 2018 and was consolidated with the hearing for appeal 18A-UI-11875-SC-T. The claimant participated. Highway Seven Service Center, Inc. (employer) did not respond to the hearing not and did not participate. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending October 27, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective October 21, 2018. The week before, while in another state for training related to his employment, the claimant began to experience stomach pain, bloating, and weakness. On Monday, October 22, the claimant reported to work at 7:00 a.m. and was immediately notified his employment was ending. That same day, the claimant contacted his doctor about his symptoms from the week before and the earliest his doctor could get him in for an appointment was Wednesday, October 24, at 2:00 p.m. The claimant went to his scheduled doctor's appointment and had to be hospitalized that night due to his illness. The claimant was discharged from the hospital on Saturday, October 27, and released to perform work on Monday, October 29.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to or available for work for the week ending October 27, 2018. Benefits are denied.

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 provides, in relevant 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.

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.

...

(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 provides, in relevant part:

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.

...

(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. The claimant was ill the majority of the work week ending October 27, 2018. He was seeking medical treatment for his illness beginning Monday of that week and his illness was severe enough to warrant hospitalization. The claimant was not able to and available for work during the week ending October 27, 2018. Accordingly, benefits are denied.

DECISION:

The December 4, 2018, reference 03, unemployment insurance decision is affirmed. The claimant was not able to and available for work during the week ending October 27, 2018. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn