

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICK J IRELAND
Claimant

LARRY PIDGEON
Employer

APPEAL 20A-UI-11633-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 15, 2020 (reference 01) unemployment insurance decision that denied benefits finding that the claimant was not able to and available for work effective May 31, 2020. After due notice was issued, a telephone hearing was held on November 4, 2020. The claimant participated personally. Attorney Stuart Higgins represented the claimant. Larry Pidgeon participated on behalf of the employer. Claimant's Exhibits 1, 2, and 3 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to work and available for work?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant began working for this employer on July 5, 2017. He worked full-time as a farm hand and mechanic. His job duties included but were not limited to making repairs to tractors and automobiles; carrying tools, barrels, and other equipment; and climbing ladders. His daily work included lifting more than 15 pounds, pushing, pulling, twisting, bending, and overhead lifting.

From November 19, 2019 through June 1, 2020, the claimant was off of work due to a work-related knee injury and recovery from surgery. On June 1, 2020, the claimant was released back to work from his knee injury; however, he had suffered a non-work related shoulder injury and sought medical treatment on June 1, 2020. The doctor restricted him to light duty work at that time and his restrictions included no lifting greater than 15 pounds, no pushing and no pulling. The claimant was on these restrictions until July 6, 2020 when his restrictions were changed to no lifting, pushing or pulling with the right arm and no climbing ladders. See Exhibit 1. On August 6, 2020, the claimant restrictions were changed to no lifting greater than 10 pounds overhead with the right arm. See Exhibit 2. On August 20, 2020, the claimant was released from his doctor to work without any restrictions. See Exhibit 3. By that time, the

claimant had permanently separated from employment with this employer. Claimant has been a mechanic or had physical labor jobs in the past.

Claimant filed his original claim for unemployment insurance benefits funded by the State of Iowa effective May 31, 2020. The permanent separation from employment issue has yet to be the subject of an investigation and determination by the Benefits Bureau. Claimant's base period included the first quarter of 2019 through the fourth quarter of 2019. No insured wages were reported during his base period from this employer. This employer operates a family farm.

REASONING AND CONCLUSIONS OF LAW:

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

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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.

Claimant has only ever worked physical labor jobs in his work history. His job duties required him to be able to lift more than 15 pounds, push, pull, and climb ladders. Claimant was not able to fully perform his job duties until August 20, 2020 when he was fully released from his doctor's care. As such, the claimant was not able to and available for work from May 31, 2020 through August 20, 2020. Benefits are denied from May 31, 2020 through benefit week-ending August 22, 2020 due to the claimant failing to establish that he was able to work pursuant to Iowa Code § 96.4(3).

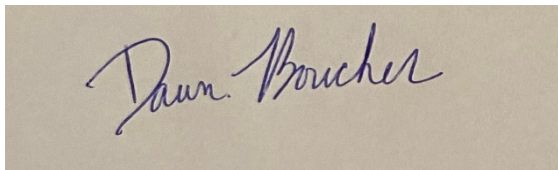
Claimant has established that he has been able to work effective the benefit week beginning August 23, 2020. Benefits are allowed effective August 23, 2020, **provided the claimant is otherwise** eligible regarding the remanded issues.

DECISION:

The September 15, 2020 (reference 01) decision is modified in favor of the appellant. The claimant has not established he was able to and available for work from May 31, 2020 through August 22, 2020, benefits are denied for that period of time. Claimant has established that he was able to work effective August 23, 2020 and benefits are allowed effective August 23, 2020, **provided the claimant is otherwise eligible.**

REMAND:

The separation from employment issue delineated in the findings of fact above is remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant has insured wages in his base period is remanded to the Tax Bureau for a wage investigation.

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Dawn Boucher
Administrative Law Judge

November 9, 2020
Decision Dated and Mailed

db/scn