

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BLANE D NYE
Claimant

APPEAL NO: 19A-UI-07536-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAGCRAFTPAPERCON II LLC
Employer

OC: 02/24/19
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Blane Nye (claimant) appealed a representative's September 16, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work with Bagcraftpapercon II (employer) as of February 4, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 16, 2019. 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 claimant offered and Exhibit A was received into evidence. 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 January 24, 2017, to February 27, 2019.

On February 24, 2019, the claimant filed for unemployment insurance benefits. His weekly benefit amount is \$573.00. He received \$14,068.00 in unemployment insurance benefits between March 3, 2019, and September 7, 2019.

In April 2019, the claimant filed for Social Security Disability Insurance (SSDI). He started receiving \$1,626.00 per month around September 3, 2019, as the August 2019, payment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.23(22) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

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). Under 20 CFR §404.1520(4). Evaluation of Disability in General. The regulation discusses the five-step sequential evaluation process for the social security disability determination. Section 20 CFR §404.1520(4)(i) states “At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. 20 CFR §404.1520(5)(b) states, “When you are already receiving disability benefits. If you are working. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.”

When an employee limits his wages to be eligible for a form of social security benefits, he is considered to be unavailable for work. In this case, the claimant had to limit his hours so he would be eligible for SSDI benefits. He is considered to be unavailable for work after February 24, 2019, because he was either qualifying or remaining eligible for SSDI. The claimant is disqualified from receiving unemployment insurance benefits beginning February 24, 2019, due to his unavailability for work.

The separation is not at issue because the employer did not protest the separation.

DECISION:

The representative’s September 16, 2019 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work. The separation is not at issue because the employer did not protest the separation.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs