

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID B ENGELKENS
Claimant

CLAUSEN SUPPLY COMPANY
Employer

APPEAL 22A-UI-04712-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/23/22
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

David B Engelkens, the claimant/appellant, filed an appeal from the February 10, 2022, (reference 01) unemployment insurance (UI) decision that denied benefits as of January 23 2022 because he was not able to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2022. Mr. Engelkens participated personally. The employer participated through Johnnie Hinsch, human resources manager, and Beth Coffee, human resources assistant. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Engelkens able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Engelkens began working for the employer on January 28, 2004. He worked as a full-time semi-truck driver until January 2022 and now works as a full-time forklift operator.

Mr. Engelkens went on unpaid medical/personal leave as of January 11, 2022. Mr. Engelkens had exhausted all of his Family Medical Leave Act (FMLA) leave but was still having medical issues. Mr. Engelkens was lighted headed and dizzy and not able to drive. Mr. Engelkens and the employer agreed that he would go on leave so he could get better. Mr. Engelkens' doctors performed several procedures, including two procedures on February 15, 2022. Mr. Engelkens talked with the employer every week to keep them updated. Mr. Engelkens' doctor released him to return to work as of March 21, 2022. Mr. Engelkens returned to work as of March 21, 2022.

REASONING AND CONCLUSIONS OF LAW:

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

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. 871-24.23(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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. 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 court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In this case, Mr. Engelkens was ill and not able to or available for work from January 23, 2022, the effective date of his claim, through March 20, 2022 when his doctor released him to return to work. Since Mr. Engelkens was not able to and available for work from January 23, 2022 through March 20, 2022, regular, state-funded unemployment insurance benefits are denied during these weeks.

DECISION:

The February 10, 2022 (reference 01) decision is AFFIRMED. Mr. Engelkens is not able to and available for work from January 23, 2022 through March 20, 2022. Benefits are denied during these weeks.



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April 1, 2022
Decision Dated and Mailed

dz/kmj