**Section 2865.105 Able To Work**

a) An individual is able to work when he is physically and mentally capable of performing work for which he is otherwise qualified.

b) The focus is upon the individual's condition, the employer's willingness to hire him is not relevant.

1) Example: An individual is 60 years old, worked as a warehouseman for 40 years and is physically able to continue doing so. Employers' reluctance to hire him, because of his age, does not render him unable to work.

2) Example: An individual tests positive for tuberculosis, a contagious disease, and, by law, is not permitted to continue working as a school teacher. He applies for jobs as a school teacher. It is the individual's condition, not school districts' unwillingness to hire him, that renders him unable to work.

3) Example: The individual has been discharged from numerous jobs because of repeated absenteeism due to habitual alcohol and drug use. When he reports to his local office, he reeks of alcohol and slurs his words. This individual will be determined to be unable to perform any type of work. It is his condition, not an employer's unwillingness to hire him, that renders him unable to work.

c) The focus is upon any work for which the individual is qualified, not limited to his or her usual or most recent job.

Example: An individual, who is 7 months pregnant, quits her job as an assembler because the job is strenuous and requires her to be constantly on her feet. She applies for desk work as a telephone receptionist, a job for which she is qualified. She would be determined to be able to work.

d) The best evidence that an individual with a disability is able to work in a particular occupation is that he has actually performed such work.

Example: An individual has cerebral palsy, which impairs his bodily functions and reduces his work output. However, he has training and experience as a computer operator and has shown that he is capable, within his physical limitations, of performing such work. He would be determined to be able to work.

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)