**Section 2865.105 Able to Work**

a) An individual is able to work when he or she is physically and mentally capable of performing work for which he or she is otherwise qualified. An individual is considered able to work to the full extent permitted by 20 CFR 604, effective February 15, 2007, except when inconsistent with the express holding of published Illinois case law.

EXAMPLE: A claimant who had been a clerk at a retail store is responsible for a minor child who is prevented from attending school due to closures resulting from the COVID-19 virus. The claimant must stay home from work to watch his/her child until school reopens. However, the claimant is able to perform work that could be performed from the isolation of his/her home (e.g., transcribing, data entry, virtual assistant services). While the claimant has most recently worked at retail locations, he/she is able to work due to his/her ability to work at home.

b) The focus is upon the individual's condition, the employer's willingness to hire him or her 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. The individual would be considered able to work if he was seeking jobs that the law permitted him to perform and that he was physically and mentally capable of performing.

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 or she has actually performed the 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 the work. He would be determined to be able to work.

(Source: Amended at 44 Ill. Reg. 11787, effective July 1, 2020)