

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY L FLYGSTAD
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 17A-UI-00038-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the December 21, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2017. Claimant did not participate. Employer participated through staffing consultant Shannon Danner.

ISSUE:

Is the claimant able to work and available for work effective November 27, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds The employer is a staffing agency. Claimant was hired on April 5, 2016. Claimant was last assigned full-time as a general laborer at AJM and Associates on September 18, 2016 and was separated from the assignment, but not the employer on September 26, 2016. Claimant was separated from the assignment when he completed the assignment. The employer instructed claimant to call the employer every Monday after his assignment ended to report if he was available. Claimant was aware of the requirement to call the employer on Monday to report his availability. The employer documents any conversations or messages with its employees.

The employer attempted to contact claimant on September 30, 2016 about a job assignment, but the employer was unsuccessful in reaching him. The employer left claimant a message and sent him a text message. Claimant did not respond to the employer about the job opportunity.

The employer attempted to contact claimant on October 3, 2016 about a job assignment, but the employer was unsuccessful in reaching him. Claimant's phone rang and rang and did not have a voicemail option.

The employer attempted to contact claimant on October 10, 2016 about a job assignment, but the employer was unsuccessful in reaching him. Claimant's phone rang and rang and did not have a voicemail option.

The employer attempted to contact claimant on October 17, 2016 about a job assignment, but the employer was unsuccessful in reaching him. Claimant's phone rang and rang and did not have a voicemail option. The employer sent claimant a text message. Claimant did not respond to the employer about the job opportunity.

The employer attempted to contact claimant on November 10, 2016 about a job assignment, but the employer was unsuccessful in reaching claimant. The employer left claimant a voicemail on his home number, but his cellphone number rang and rang and did not have a voicemail option.

On Friday, November 11, 2016, claimant contacted the employer. Claimant told the employer that he had moved. Claimant gave the employer his new address and stated he was still looking for work and that he can travel to the employer's territory for work. Claimant did not update his phone number at this time. On Tuesday, November 22, 2016, claimant called the employer and updated his phone number and reported that he was still looking for work.

On November 30, 2016, the employer attempted to contact claimant at his new phone number about a job opportunity, but was unsuccessful. The employer left claimant a voicemail, but he did not respond about the job opportunity.

On December 5, 2016, the employer attempted to contact claimant about another job assignment, but was unsuccessful. The employer left claimant voicemail left and sent him a text message. Claimant did not respond to the employer about the job assignment.

On January 10, 2017, the employer attempted to contact claimant about a job opportunity, but was unsuccessful. The employer left claimant a voicemail, but he did not respond about the job opportunity.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work effective November 27, 2016.

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 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. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. After claimant's most recent assignment ended, he was instructed to contact the employer on Monday to report his availability. Although claimant did contact the employer on November 11 and 22, 2016 to update his contact information, he never responded to any job offers communicated by the employer. The employer contacted claimant at his new phone number on November 30, 2016, December 5, 2016, and January 10, 2017 about job opportunities, but he failed to respond to the employer. Furthermore, claimant failed to maintain contact with the employer on every Monday to report his availability. Accordingly, benefits are denied.

DECISION:

The December 21, 2016, (reference 02) unemployment insurance decision is reversed. Claimant is not able to work and available for work effective November 27, 2016. Benefits are denied.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs