

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES A HOLLADAY
Claimant

ELITE FLAGGING INC
Employer

APPEAL 18A-UI-10094-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/09/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

James A. Holladay (claimant) filed an appeal from the October 2, 2018, reference 05, unemployment insurance decision that denied benefits based upon the determination he is not able to and available for work effective September 9, 2018 as he is limiting his availability so as not to affect social security payments. After due notice was issued, a telephone conference hearing was held on October 22, 2018 and consolidated with the hearing for appeal 18A-UI-10093-SC-T. The claimant participated. Elite Flagging, Inc. (employer) participated through President Carolina DeShaw and Director of Field Operations James Holladay. The Employer's Exhibit 1 was received without objection. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents and the claimant's wage history (WAGEA).

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective September 9, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Traffic Control Officer from May 14, 2017 through July 22, 2017. He separated from employment and at some point filed a claim for Social Security Disability (SSD) benefits due to aneurysms in his eyes and complications related to diabetes. The claimant's doctor assisted him in filing his application for SSD benefits.

On June 8, 2018, the claimant sought part-time, in-town employment with the employer as he did not want to earn more money than was allowed by the SSD regulations. The employer did not hire the claimant as it does not have part-time work and cannot guarantee a certain location.

The claimant filed his claim for benefits effective September 9, 2018 and his base period includes April 1, 2017 through March 31, 2018. During his base period and before working for

the employer, the claimant was employed full-time with the City of Coralville. He does not have any other employers in his base period.

On September 27, 2018, the claimant participated in a fact-finding interview with Iowa Workforce Development (IWD). He told the fact-finder he was only seeking part-time work due to the potential receipt of SSD benefits. He expanded on his answer explaining he was limited in his ability to work due eye aneurysms and his weak arms that stop working later in the day. The claimant stated he has been denied SSD benefits but he has lawyers appealing that decision. The claimant is currently unable to drive and his wife, who provides his transportation, works full-time. The claimant has not provided any medical documentation stating he is able to work full-time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work, available for work, and actively and earnestly seeking work effective September 9, 2018. Benefits are denied.

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. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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).

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant contends he is capable of and seeking full-time employment. However, he has received medical assistance in filing for and requesting SSD due to his impairments which limit his ability to work. That doctor has not provided a release stating the claimant is able to work full-time. The claimant is also limiting his availability to part-time work. The wage credits in his base period were all for full-time employment. The claimant is not available to the same extent as he was when he earned his wage credits. Accordingly, he is not eligible for unemployment insurance benefits effective September 9, 2018 and continuing until such time as he provides medical documentation stating that he is able to work full-time and notifies IWD he is seeking full-time employment. Benefits are denied.

DECISION:

The October 2, 2018, reference 05, unemployment insurance decision is affirmed. The claimant is not able to and available for work effective September 9, 2018 and continuing until such time as he provides medical documentation stating that he is able to work full-time and notifies IWD he is seeking full-time employment. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn