

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JEFFREY G RASMUSSEN**  
Claimant

**APPEAL NO. 09A-UI-10923-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Original Claim: 06/14/09  
Claimant: Appellant (3-R)**

Iowa Code section 96.4(3) – Able & Available  
Iowa Code section 96.4(3) – Work Search Requirement

**STATEMENT OF THE CASE:**

Jeffrey Rasmussen filed a timely appeal from the July 21, 2009, reference 01, decision that warned him of his obligation to make at least two job contacts each week he claimed benefits and that concluded Mr. Rasmussen had failed to make the required minimum number of job contacts for the week ending July 18, 2009. After due notice was issued, a hearing was held on August 14, 2009. Mr. Rasmussen participated.

**ISSUE:**

Whether Mr. Rasmussen was available for work during the week that ended July 18, 2009.

Whether Mr. Rasmussen failed to engage in an active and earnest search for work during the week that ended July 18, 2009.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeffrey Rasmussen established a claim for unemployment insurance benefits that was effective June 14, 2009. Mr. Rasmussen claimed and received benefits for the week that ended July 18, 2009. On Saturday, July 11, 2009, Mr. Rasmussen traveled from Iowa to Wisconsin for a family vacation. Mr. Rasmussen returned to Iowa on Saturday, July 18, 2009. Mr. Rasmussen's only work-search related activity during the week that ended July 18, 2009, was his receipt of a follow-up telephone call from an employer he had previously contacted about possible employment.

**REASONING AND CONCLUSIONS OF LAW:**

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".

871 IAC 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.

Iowa Administrative Code section 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(38) "c" are met.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The weight of the evidence indicates that Mr. Rasmussen was not on a temporary layoff during the week ending July 18, 2009. Mr. Rasmussen claimed benefits for that week. Mr. Rasmussen was expected to engage in an active and earnest search for work during that week and to be available for work and work referrals. The weight of the evidence indicates that Mr. Rasmussen was out of state on vacation for the entire week of July 12-18, 2009 and was

removed from the labor market and was not engaged in an active and earnest search for new employment. Receipt of the one phone call from a prospective employer does not alter that conclusion.

The work search warning the Workforce Development representative entered on July 21, 2009 was appropriate and is affirmed. Unfortunately, the administrative law judge must take the additional step of disqualifying Mr. Rasmussen for benefits for the week that ended July 18, 2009, because he did not meet the work availability requirements during that week.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

This matter will be remanded to the Claims Division for entry of an overpayment decision concerning benefits disbursed for the week ending July 18, 2009.

**DECISION:**

The Agency representative's July 21, 2009, reference 01, is affirmed. The claimant failed to engage in an active and earnest search for new employment during the week that ended July 18, 2009. The claimant was not available for work during the week that ended July 18, 2009. The claimant is disqualified for benefits for the week ending July 18, 2009.

This matter will be remanded to the Claims Division for entry of an overpayment decision concerning benefits disbursed for the week ending July 18, 2009.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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