

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DACE F TRENT
Claimant

APPEAL NO. 13A-UI-03836-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE STAFFING & PROFESSIONAL
Employer

OC: 12/02/12
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 20, 2013, reference 02, which denied benefits as of December 2, 2012, finding that the claimant was unduly limiting his availability for work. After due notice, a telephone hearing was held on May 1, 2013. The claimant participated. The employer participated by Ms. Nicole Postello, Human Resource Representative.

ISSUE:

At issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Dace Trent began employment with Adventure Staffing & Professional on October 13, 2011. Claimant was most recently assigned to work as a production worker at Polaris Industries beginning September 14, 2012. Mr. Trent continues to be employed at Polaris Industries through Adventure Staffing & Professional at the time of the hearing of the matter.

Mr. Trent was informed by the client employer, Polaris Industries, that the yearly annual holiday shutdown of the facility would take place between December 4, 2012 through January 7, 2013. Mr. Trent immediately called Adventure Staffing & Professional on November 13, 2012 to inquire about the possibilities of other placements during the Polaris Industries shutdown. Mr. Trent again called the temporary employer on November 19 for the same reason. Mr. Trent was told to wait until the shutdown took place as the temporary employer would not know what other jobs might be available until that time.

Mr. Trent followed the advice of the Adventure Staffing & Professional representative and waited until the client employer shutdown and then called Adventure Staffing & Professional before the end of business that day on December 4, 2012. The claimant inquired about work and was told of one potential job possibility. A representative promised to call Mr. Trent if the position

became available; however, Mr. Trent received no further calls and concluded there was no available work to him.

Employer records do not reflect that Mr. Trent made himself available for job assignments although two positions were potentially available to him.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant unduly limited his availability for work. It does not.

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.

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

871 IAC 24.22(2) provides that to satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work for which the individual does not have good cause to refuse. The individual must be genuinely attached to the labor market.

In the case at hand, Mr. Trent testified with specificity about his activities to inform Aventure Staffing & Professional of his desire to accept other part-time assignments during a lengthy plant shutdown where he was currently assigned by Aventure Staffing. The claimant called twice in advance of the shutdown looking for work and then followed the representative's advice and called again immediately after the layoff took place. Mr. Trent is credible in his testimony that he looked for work and was told that the temporary service would call him back if there was an opening. Although the administrative law judge is aware that the employer believes that there was not sufficient contact and that there were job openings, other company records may not accurately reflect Mr. Trent's contacts for work in this instance.

Because the evidence in the record establishes the claimant has not limited himself to waiting to return to work with one preferred client employer and establishes that the claimant sought work actively and earnestly, the administrative law judge concludes the claimant has met the able and availableness requirement of the law. The claimant is eligible to receive unemployment insurance benefits, provided that he has met all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated March 20, 2013, reference 02, is reversed. The claimant has not unduly limited his availability for work. The claimant is able and available for work and eligible for benefits effective December 2, 2012, providing he has met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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