

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AROENAN KEJU
Claimant

SEDONA STAFFING INC
Employer

APPEAL 19A-UI-03895-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/19
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:

On May 13, 2019, Areonan Keju (claimant) filed an appeal from the May 8, 2019, reference 01, unemployment insurance decision that denied benefits effective April 21, 2019 through the week ending May 11, 2019, based upon the determination he was not available for work due to a lack of transportation. After due notice was issued, a telephone conference hearing was held on June 5, 2019. The claimant and his wife, Enwita Bing, participated. Sedona Staffing, Inc. (employer) participated through Unemployment Benefits Administrator Colleen McGuinty and Nordstrom Facilitator Julie Thill. Marshallese interpretation was provided by Carmen (employee identification MSCA) from CTS Language Link. The Claimant's Exhibit A was admitted into the record without objection.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work during the three-week period ending May 11, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was most recently assigned to work for the employer's client Nordstrom on January 14, 2019 and his last day physically worked was April 4. The claimant remains employed with the employer and assigned to Nordstrom.

The claimant filed his claim for benefits effective April 21 and filed continued weekly claims through the week ending May 11. He notified the employer on April 22 that he had lost his phone which is why he did not report to work or respond to the employer's messages. On April 24, the claimant notified the employer he was not available for work because he did not have transportation. The claimant did not obtain new transportation until after May 11.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not available for work effective April 21 through the week ending May 11. 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(2) provides, in relevant part:

Benefit 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 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.

...

(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.

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 did not have transportation during the three week period ending May 11 which rendered him unavailable for work. Therefore, he is not able to establish that he was genuinely attached to the labor market during that time. Accordingly, benefits are denied.

DECISION:

The May 8, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was not available for work from April 21, 2019 through May 11, 2019. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn