

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN A SECOSKE
Claimant

APPEAL NO. 15A-UI-11011-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLAEYS BROS MOVING & STORAGE INC
Employer

OC: 08/16/15
Claimant: Appellant (1-R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Benjamin Secoske filed an appeal from the September 11, 2015, reference 02, unemployment insurance decision that denied benefits effective August 23, 2015, based on an Agency conclusion that Mr. Secoske was a full-time student and, therefore, not available for work within the meaning of the law. After due notice was issued, a hearing was held on October 16, 2015. Mr. Secoske participated. Tom Claeys represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO (Continued Claims record) and DBRO (Database Readout). The administrative law judge also took official notice of the September 10, 2015, reference 01, decision that denied benefits effective August 16, 2015, based on an Agency conclusion that the claimant was unable to work due injury and the September 16, 2015, reference 03, decision that allowed benefits to the claimant effective September 13, 2015 provided he was otherwise eligible, based on an Agency conclusion the claimant was at that point medically able to work.

ISSUES:

Whether Mr. Secoske has been available for work within the meaning of the law since August 23, 2015. He has not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Benjamin Secoske established a claim for benefits that was effective August 16, 2015, but has not received benefits in connection with the claim. Since August 24, 2015, Mr. Secoske has been a full-time college student. Mr. Secoske's class schedule includes morning classes and early afternoon classes, Monday through Thursday. Since Mr. Secoske established his claim for benefits, he has not looked for new employment other than inquiring about a work-study position at his college. Claeys Brothers Moving & Storage, Inc., is Mr. Secoske's most recent employer and the sole base-period employer for purposes of the claim that was effective August 16, 2015. Mr. Secoske's work for that employer involved daytime, but variable work hours. Mr. Secoske's workday would start at 7:45 a.m. Mr. Secoske worked from 15 to 35 hours per week. Mr. Secoske's class schedule conflicts with the daytime hours he used to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.23(5) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the

workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Because the reference 01 and reference 03 decisions addressed the claimant's medical ability to perform work and because those decisions were not the basis for the claimant's appeal, those decisions limit the appropriate scope of the present decision.

The evidence in the record establishes that Mr. Secoske has not been available for work within the meaning of the law since the week that started August 23, 2015. Since that time, Mr. Secoske has been a full-time student, and has not been available for work to the same extent as during his base period. Indeed, aside from inquiring about a work-study position at his college, Mr. Secoske has made no job search and has consistently reported zero employer contacts when he has made his weekly claims. Because Mr. Secoske has not met the work availability requirement since August 23, 2015, benefits are denied effective that date.

Given the claimant's status as a full-time student, the claimant should consider applying with Workforce Development for Department Approved Training status. The claimant can contact his local Workforce Development Center for more information on Department Approved Training.

Because there has been a separation from the employment, because the separation was not adjudicated, and because the claimant did not wish to waive formal notice and address the separation as part of the appeal hearing, this matter will be remanded to the Benefits Bureau for adjudication of the separation issues.

DECISION:

The September 11, 2015, reference 02, unemployment insurance decision is affirmed. The claimant has not been available for work within the meaning of the law since the week that started August 23, 2015. Benefits are denied effective August 23, 2015. The availability disqualification continues as of the entry of this decision.

This matter is remanded to the Benefits Bureau for adjudication of the employment separation.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/pjs