

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL L SONIER
Claimant

APPEAL 17A-UI-13322-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY COMMUNITY SCHOOL DIST
Employer

**OC: 12/03/17
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 20, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2018. The claimant participated personally. The employer participated through Stefanie Verros, assistant director of human resources. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective December 3, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for this employer until October 30, 2017, as an operations and maintenance custodial substitute until October 30, 2017. While the claimant did not have guaranteed hours or shifts, he worked often full-time hours. The claimant then accepted a position through Performance Contractor Inc., located in Wyoming, until he was laid off on December 1, 2017. The claimant established his claim for benefits in response to the layoff.

Since being on layoff, this employer reported it has had multiple opportunities for him to work, but that he is unresponsive. The employer has not reported any specific refusals of work to Iowa Workforce Development.

The claimant acknowledged he is not willing to perform work for this employer, in between trade jobs, because if he does, it will reduce his unemployment insurance benefits for that week. Since December 1, 2017, the claimant has been waiting for his union to recall him to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Iowa Admin. Code r. 871-24.23(22) provides:

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

(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).

The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Admin. Code r. 871-24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). 24.22(1) In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. The claimant has restricted his ability to perform work because he is waiting to be recalled back to work, and in the interim, does not want to perform work that could impact his ability to collect unemployment insurance benefits. While the claimant may not be refusing to work to collect social security benefits, this is akin to the case at hand, as he is intentionally restricting his earning to collect unemployment benefits. Accordingly, the administrative law judge concludes the claimant is not able and available for work effective December 3, 2017, and benefits are denied.

DECISION:

The December 20, 2017, (reference 01) decision is affirmed. The claimant is not able to and available for work effective December 3, 2017. Benefits are denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn