

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GLAVESTER L BRIDGETT
Claimant

APPEAL 17A-UI-13428-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 08/20/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(27) – Active and Earnest Search for Work
Iowa Admin. Code r. 871-24.39(2) – Department Approved Training (DAT)

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 2017, (reference 02), unemployment insurance decision that denied benefits based upon filing a weekly continued claim indicating unavailability for work the week-ending December 9, 2017. After due notice was issued, a telephone conference hearing was scheduled to be held on January 22, 2018. Claimant participated.

ISSUES:

Is the claimant able to work and available for work and did the claimant make an adequate search for work the week-ending December 9, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant made a keystroke error when filing the weekly continued claim indicating she was not able to or available for work or refused an offer of or referral to work for the week-ending December 9, 2017. The administrative record reflects that claimant was authorized for DAT between August 26 and December 23, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was excused from making a work search the week-ending December 9, 2017.

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:

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(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.

Iowa Code § 96.4(6) provides:

a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. (1) An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. section 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. section 2319(l), if weekly wages for

the work are not less than eighty percent of the individual's average weekly wage.

Iowa Admin. Code r. 871-24.39 provides:

Department Approved Training (DAT) Department-approved training or retraining program. The intent of department-approved training is to *exempt the individual from the work search requirement* for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department. *While attending the approved training course, the claimant need not be available for work or actively seeking work.* After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

(Emphasis added.)

As long as claimant remains eligible for DAT, the able and available requirement is waived pursuant to Iowa Admin. Code r. 871-24.39(2). For any week in which the claimant is not approved for DAT, she must make an earnest and active search for work.

DECISION:

The December 22, 2017, (reference 02) unemployment insurance decision is reversed. The ability to work and availability for work, and work search requirements are waived while claimant is eligible for DAT. Benefits are allowed the week-ending December 9, 2017.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs