

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KOKOU M YOVONOU
Claimant

APPEAL 16A-UI-06093-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 10/25/15
Claimant: Appellant (3R)

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:

Koukou M. Yovonou (claimant) filed an appeal from the May 27, 2016, (reference 06), unemployment insurance decision that denied benefits effective March 27, 2016 as he was working enough hours to be considered employed and was removed from the labor market. After due notice was issued, a hearing was held in Davenport, Iowa at 9:00 a.m. on July 26, 2016. The claimant participated through Interpreter Craig Roalson. Official notice was taken of the administrative record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits beginning on October 25, 2015 with an additional date of December 6, 2015. On February 28, 2016 the claimant began a temporary full-time position with Express Services, Inc. working 36 hours a week at \$11.00 an hour for two weeks. He continued to make his weekly claim for benefits during those two weeks and did not report any wages earned.

On March 28, 2016, the claimant accepted a position through Labor Solutions working at John Deere. He worked 40 hours a week at \$10.50 an hour. The claimant's assignment ended on June 6, 2016. The claimant continued to make his weekly claim for benefits and reported some wages earned. On July 8, 2016, the claimant accepted a position with Seaberg where he remains employed working 40 hours a week and earning \$13.00 an hour.

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. Benefits are denied.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant is not able and available for work effective February 28 through March 12, 2016, March 27 through June 4, 2016, and beginning again on July 10, 2016. The claimant testified that he was employed in full-time positions during these times. The claimant is not eligible for unemployment insurance benefits as he was removed from the labor market. Accordingly, benefits are denied.

DECISION:

The May 27, 2016, (reference 06) unemployment insurance decision is modified. The claimant is not able and available for work effective February 28 through March 12, 2016, March 27 through June 4, 2016, and beginning again on July 10, 2016 continuing until he provides notice to Iowa Workforce Development that he is no longer employed. Benefits are denied.

REMAND:

The administrative record shows the claimant did not report any wages for the first quarter of 2016 when calling in his weekly claim for benefits. However, Express Services, Inc. reported \$539.00 in wages paid to the claimant in the first quarter of 2016. The discrepancy between wages reported by the claimant and his employer is remanded to Investigation & Recovery for an investigation.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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