

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A LEE
Claimant

APPEAL NO. 19A-UI-05514-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 07/01/18
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Robert Lee filed a timely appeal from the July 8, 2019, reference 07, decision that denied benefits effective June 2, 2019, based on the deputy's conclusion that Mr. Lee was unable to work due to injury. After due notice was issued, a hearing was held on August 5, 2019. Mr. Lee participated personally and was represented by attorney Randall Schueller. Mai Lor represented the employer and presented testimony through BreAnna Hart. The hearing in this matter was consolidated with the hearing in Appeal Numbers 19A-UI-05515-JTT and 19A-UI-05516-JTT. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN (database readout for 07/01/18 benefit year) and KCCO (continued claims).

ISSUE:

Whether the claimant was able to work, available for work, and engaged in an active and earnest search for new employment during the period of June 2, 2019 through July 6, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Lee established an "additional claim" for unemployment insurance benefits that Iowa Workforce Development deemed effective June 2, 2019. The additional claim was based on a July 1, 2018 original claim date. Mr. Lee's base period wages credits for purposes of the claim year that started July 1, 2018 are based on a history of full-time employment. Mr. Lee established the additional claim for benefits with the assistance of his ex-wife.

Prior to June 5, 2019, Mr. Lee had been subject to work-related medical restrictions regarding his back that restricted him to performing only light-duty work. The medical restrictions restricted Mr. Lee from repetitive bending and twisting and from lifting more than 20 pounds. The medical provider had further indicated that Mr. Lee would need to be allowed to get up and move around every 30 minutes as needed. Despite the medical restrictions, Mr. Lee had been able to perform full-time, light-duty work for employer QPS Employment Group, Inc. until that employer elected to no longer accommodate the work restrictions effective May 10, 2019.

Despite being able to perform light-duty work within his medical restrictions, Mr. Lee commenced receiving weekly worker's compensation benefits for temporary total disability (TTD) at the employer's insistence in May 2019 and continued to receive TTD benefits for the period that ended June 30, 2019.

Effective Wednesday, June 5, 2019, the physician selected by QPS and/or its worker's compensation carrier released Mr. Lee to return to work without restrictions. Mr. Lee established his additional claim for unemployment insurance benefits subsequent to the full-release to return to work.

After Mr. Lee established the "additional claim" for unemployment insurance benefits that was effective June 2, 2019, he did not make weekly unemployment insurance claims until he made a weekly claim on July 7, 2019 for the week that ended July 6, 2019. In other words, Mr. Lee did not make a weekly claim for the weeks that ended June 8, 15, 22, and 29, 2019.

During the week that ended June 8, 2019, Mr. Lee applied for work at Hotel Fort Des Moines and at Des Moines Area Regional Transit Authority (DART). During that same week, Mr. Lee commenced part-time employment with Casey's Marketing Company. Once Mr. Lee started the Casey's employment, he discontinued his work search.

When Mr. Lee and/or his ex-wife made Mr. Lee's weekly claim for the week that ended July 6, 2019, whoever made the report reported that Mr. Lee had made two employer contacts, even though he had looked for work that week.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A

statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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(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 Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

Mr. Lee was physically able to perform full-time work from the time that he established the additional claim for benefits that was effective through the benefit week that ended July 6, 2019.

Mr. Lee did not meet the availability requirement during any of the weeks between June 2, 2019 and July 6, 2019 and is not eligible for benefits for any of those weeks. For the week that ended June 8, 2019, Mr. Lee met the work search requirement, but filed no weekly claim. For the weeks that ended June 15, 22 and 29, 2019, Mr. Lee did not conduct a work search and did not file a weekly claim. For the week that ended July 6, 2019, Mr. Lee filed a weekly claim that contained false information stating that he had conducted a work search when he had not

looked for work. Given the base period history of full-time employment, Mr. Lee's part-time job with Casey's did not satisfy the availability requirement and did not relieve him of his obligation to search for full-time work.

DECISION:

The July 8, 2019, reference 07, decision, is modified as follows. The claimant satisfied the work ability requirement for the benefit weeks between June 2, 2019 and July 6, 2019. However, the claimant did not satisfy the availability requirement for any of those weeks and is not eligible for benefits for those weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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