

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANTHONY J DUNN
Claimant

APPEAL NO. 18A-UI-01631-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/24/17
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Anthony Dunn (claimant) appealed a representative's January 25, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he still worked for Casey's Marketing Company (employer) for the same hours and wages as in his original contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 2, 2018. The claimant participated personally. The employer notified the administrative law judge prior to the start of the hearing that it did not wish to participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work. .

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant has been employed by another employer, Bertch Cabinets, since September 20, 2015, as a full-time labor. Bertch Cabinets laid the claimant off for lack of work from December 24 to December 30, 2017. The claimant filed for unemployment insurance benefits with an effective date of December 24, 2017. The claimant received \$296.00 in unemployment insurance benefits for the one week period ending December 30, 2017. The claimant returned to work with Bertch Cabinets on January 2, 2018.

On January 6, 2018, the claimant was hired as a part-time employee with Casey's Marketing Company. He continues to work for the company and has not filed for unemployment insurance benefits since the start of his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available for work for the week ending December 30, 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".

The claimant applied for unemployment insurance benefits for the week ending December 30, 2017. During that week he was not employed with this employer or any other employer. There was no evidence that there were any restriction or limitation on employability. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

The issue of the claimant's separation from work from Bertch Cabinets is remanded for determination.

DECISION:

The representative's January 25, 2018, decision (reference 01) is reversed. The claimant was able and available for work for the week ending December 30, 2017. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of the claimant's separation from work from Bertch Cabinets is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs