

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TERENCE E HOWELL**  
Claimant

**C V K CORPORATION**  
Employer

**APPEAL 18A-UI-06094-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/06/18**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 21, 2018, (reference 01), unemployment insurance decision that allowed benefits after a return from a leave of absence. After due notice was issued, a telephone conference hearing was held on June 19, 2018. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through company president Vincent Copple.

**ISSUE:**

Is the claimant able to work and available for work effective May 6, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time optical dispenser working with customers, some of whom are dependent adults. His last day of work was April 3, 2018. He was incarcerated in the Polk County Jail and in Michigan from April 4 through April 28, 2018. (Administrative record fact-finding interview notes.) The employer found out later he was on the sex offender registry list and is restricted from working with dependent adults. Copple would not allow him to return to work without information that he was allowed to work for the employer, given those restrictions. He did not and was permanently separated from employment. That separation from employment has not yet been resolved by the Benefits Bureau of IWD.

**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 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)(1) and (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.

*j. Leave of absence.* A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant has the burden of proof to establish his ability to work, including his legal ability to work for this employer according to the terms of the sex offender registry limitations. The employer's request was reasonable that claimant provide some official authorization for him to work for this employer where customers include dependent adults. His failure to do so renders him unable to work. Accordingly, benefits are denied.

**DECISION:**

The May 21, 2018, (reference 01) decision is reversed. The claimant is not able to work and available for work effective May 6, 2018. Benefits are withheld until such time as the claimant establishes that he is able to and available for work given the job searches he is making since there has already been a separation from this employer.

**REMAND:** The overpayment and separation issues are remanded to the Benefits Bureau of Iowa Workforce Development for an initial determination with notice and appeal rights.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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