

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROGER B STANLEY
622 EUCLID #7
DES MOINES IA 50313

CROWN SERVICES INC
c/o SIMON COMPENSATION
SERVICES COMPANY
PO BOX 629
LEWIS CENTER OH 43035-0629

Appeal Number: 04A-UI-00711-RT
OC: 11-02-03 R: 02
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements
(Same Employment – Benefits Not Charged)

STATEMENT OF THE CASE:

The claimant, Roger B. Stanley, filed a timely appeal from an unemployment insurance decision dated January 20, 2004, reference 02, denying unemployment insurance benefits to him as of December 14, 2003. After due notice was issued, a telephone hearing was held on February 11, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Terri Martin, Office Manager, participated in the hearing for the employer, Crown Services, Inc. The administrative law judge

takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as an on-call laborer from and after October 13, 2000. His most recent assignment was on December 12, 2003, for one day, when he was assigned to Embassy Des Moines Club. The claimant satisfactorily completed that assignment. However, the claimant had a restriction on his ability to work to wearing safety glasses for industrial general labor positions because he had a prosthetic eye. The employer was able to accommodate the claimant's condition and placed him in positions including industrial general labor positions, and the claimant accepted and satisfactorily completed the assignments. Effective after November 8, 2003, the claimant placed restrictions on his availability for work for having Tuesdays off because he was in school. The claimant also placed restrictions on his availability because of lack of transportation. These two restrictions impeded the claimant's opportunity to obtain employment and caused him to refuse offers of work on December 18, 2003. The claimant has been approved for Department approved training from benefit week ending January 17, 2004 through benefit week ending August 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able and available for work. He is ineligible to receive such benefits from including benefit week ending December 20, 2003 to and including benefit week ending January 10, 2004.

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".

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

871 IAC 24.23(16), (26) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The administrative law judge concludes that the claimant has the burden to prove to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he is and was available for work. The claimant did not participate in the hearing and provide sufficient evidence of his availability for work. The employer's witness, Terri Martin, Office Manager, credibly testified that the claimant restricted his opportunities for work excluding Tuesdays beginning after November 8, 2003 because he was in school and further placed restrictions on his availability for work because of lack of transportation. Ms. Martin credibly testified that these two restrictions impeded the claimant's opportunity for employment. The employer is a temporary employment agency and the claimant worked for it since October 13, 2000, but the assignments became more difficult when the claimant placed such restrictions on his availability. The claimant's employment with the employer never changed inasmuch as he remained on-call, as needed, except that his availability was diminished. Ms. Martin also testified that the claimant placed a restriction on his ability to work, namely, requiring safety glasses for industrial labor work, but that the employer was able to accommodate this and this did not unduly restrict the claimant's ability to work. There were no other restrictions on the claimant's ability or availability for work. Accordingly, the administrative law judge concludes that the claimant is not available for work because of the restrictions placed upon him. An individual can be disqualified for being unavailable for work when that person is a full-time student devoting the major portion of his or her time and efforts to studies and has no reasonable expectancy of securing employment, or where availability for work is unduly limited because the claimant is not willing to work during the hours in which suitable work is available, or where the claimant is still employed in a part-time job, as he is here, at the same hours and wages as in the original contract of hire and further, the claimant is not considered partially unemployed. Accordingly, the administrative law judge concludes that the claimant is not excused from the provisions requiring him to be available for work because he cannot be considered partially unemployed or temporarily unemployed. Therefore, the administrative law judge concludes that the claimant is ineligible to receive unemployment insurance benefits from benefit week ending December 20, 2003 through and including benefit week ending January 10, 2004.

The administrative law judge notes that the claimant has been approved for Department approved training beginning with benefit week ending January 17, 2004 and continuing through August 21, 2004. During that period of time the claimant cannot be ineligible to receive unemployment insurance benefits because he was not available for work nor can he be disqualified to receive unemployment insurance benefits because he refused to accept suitable

work. Accordingly, the administrative law judge concludes that the claimant is eligible to receive unemployment insurance benefits beginning with benefit week ending January 17, 2004 and continuing thereafter, so long as he is appropriately attending his Department approved training. During that period of time, any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein because the claimant is attending Department approved training.

Iowa Code Section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the claimant is receiving the same employment that he received during his base period and, as a result, the employer should not be charged for any benefits to which the claimant is entitled from and after benefit week ending December 20, 2003, in addition to the provisions regarding Department approved training.

The administrative law judge would ordinarily remand this case for a determination as to whether the claimant had refused to accept suitable work, since that issue was not set out on the notice of appeal and the administrative law judge has no jurisdiction to decide that issue. However, the administrative law judge concludes that it is not now necessary to remand this case for that issue because the claimant has received no unemployment insurance benefits since benefit week ending November 18, 2003.

DECISION:

The representative's decision of January 20, 2004, reference 02, is modified. The claimant, Roger B. Stanley, is ineligible to receive unemployment insurance benefits from and including benefit week ending December 20, 2003 to and including benefit week ending January 10, 2004 because he was not available for work and was not excused from such provisions. Beginning with benefit week ending January 17, 2004 and continuing thereafter, the claimant is eligible to receive unemployment insurance benefits, provided he is otherwise eligible and qualified and so long as the claimant appropriately attends Department approved training. Any unemployment insurance benefits to which the claimant is entitled after benefit week ending December 20, 2003, shall not be charged to the account of the employer herein.

b/b