

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRY D DUNLAP
Claimant

APPEAL 17A-UI-00409-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/23/16
Claimant: Appellant (4)**

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:

The claimant filed an appeal from the January 11, 2017, (reference 01), unemployment insurance decision that denied benefits based upon claimant's availability for work. After due notice was issued, a telephone conference hearing was scheduled to be held on February 6, 2017. Claimant participated.

ISSUE:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's wife underwent surgery on November 30, 2016, and was in the hospital a few days afterward recuperating. On December 2, 2016, claimant also received medical treatment. Claimant was not able to or available for work during the week ending December 3, 2016.

Claimant was able to and available for work during the three weeks ending December 24, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not available for work during the week ending December 3, 2016, but was able to and available for work from December 4 through December 24, 2016.

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.

Because claimant was providing to support to his wife and underwent his own medical procedure, he was not available for work for the majority of the work week during the week ending December 3, 2016. Therefore, claimant is not eligible to receive benefits for the week ending December 3, 2016.

Claimant was available for work during the three weeks ending December 24, 2016, and is eligible to receive benefits for those three weeks.

DECISION:

The January 11, 2017, (reference 01) unemployment insurance decision is modified in favor of appellant. The claimant is not able to or available for work for the one week ending December 3, 2016. Claimant is able to or available for work during the three weeks ending December 24, 2016.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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