

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY W WILCKE
Claimant

APPEAL NO. 11A-UI-06594-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERSON PERSONNEL INC
Employer

OC: 04/10/11
Claimant: Appellant (1-R)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jeffrey Wilcke filed a timely appeal from the May 11, 2011, reference 03, decision that denied benefits effective December 6, 2010, based on an Agency conclusion that he was not available for work. After due notice was issued, a hearing was held on June 14, 2011. Mr. Wilcke participated and presented additional testimony through Gregg Harms. Jim Robertson, unemployment insurance operations manager, represented the employer. Exhibits One and A were received into evidence.

ISSUE:

Whether the claimant has been able to work and available for work since December 6, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeffrey Wilcke began a full-time, temporary work assignment at Primera Foods in Britt, Iowa on September 20, 2011, and completed the assignment on November 4, 2010. Mr. Wilcke contacted temporary employment agency Masterson Personnel for work on November 6, 2010, but the agency did not have any additional work for Mr. Wilcke at that time.

Mr. Wilcke had resided in Forest City while he worked at the assignment in Britt. Mr. Wilcke estimates the distance between two towns as 15 to 20 miles. Mr. Wilcke separated from his spouse on January 4, 2011 and moved in with his sister and brother-in-law in Garner.

On December 6, 2010 the temporary employment agency contacted Mr. Wilcke and offered additional work at Primera Foods in Britt. Mr. Wilcke declined the assignment due to lack of transportation. The agency next contacted Mr. Wilcke on February 4, 2011 about another assignment. On February 7, 2011, Mr. Wilcke declined the assignment due to lack of transportation. On April 14, 2011, the agency contacted Mr. Wilcke regarding an assignment in Lake Mills. Mr. Wilcke did not respond to the message until April 29, 2011, at which point he declined the assignment. Mr. Wilcke asserted at that point that he now had a car. The agency documented all contact with Mr. Wilcke.

Jeffrey Wilcke had established an "additional" claim for benefits that was effective November 7, 2010 in connection with the end of his assignment at Primera Foods. Mr. Wilke continued to collect regular benefits through April 9, 2011, when the benefit year expired. Mr. Wilke then established a new claim that was effective April 10, 2011 and received benefits through May 7, 2011.

On May 10, 2011, Mr. Wilcke participated in a fact-finding interview regarding his decision to decline the new assignment that would have started on December 7, 2010. Mr. Wilcke told the Workforce Development representative that he had declined the assignment due to transportation problems and that his truck was broken down "for a couple of weeks." The problems with the truck were not limited to a couple weeks. Mr. Wilcke continued to have problems with his truck in May 2011.

REASONING AND CONCLUSIONS OF LAW:

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 24.22(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.

Mr. Wilcke has the burden of proving, by a preponderance of the evidence, his availability for work through presentation of direct and satisfactory evidence. Mr. Wilcke has failed to do that. Mr. Wilcke has provided contradictory statements to Iowa Workforce Development. Significant

aspects of Mr. Wilcke's testimony are squarely refuted by the employer's business records made at time of contact between the parties.

The weight of the evidence establishes that Mr. Wilcke has not met the work availability requirements and has not been eligible for benefits since December 7, 2010. The weight of the evidence establishes that Mr. Wilcke has lacked reliable transportation since that time. Mr. Wilcke had presented insufficient evidence to establish that he even now has reliable transportation to assist him with getting to and from work. Benefits are denied effective December 6, 2010. The disqualification continued as of the appeal hearing on June 14, 2011.

DECISION:

The Agency representative's May 11, 2011, reference 03, is affirmed. The claimant not been available for work since December 7, 2010. Benefits are denied effective December 6, 2010. The disqualification continues as June 14, 2011

This matter is remanded for entry of an overpayment decision concerning the benefits Mr. Wilcke received for the period of December 5, 2010 through May 7, 2011. In addition, the remand should add whether the claimant has been able and available for work since June 15, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw