

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDY W WILLIAMS
Claimant

APPEAL NO. 08A-UI-06780-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SGS LLC
Employer

OC: 01/06/08 R: 04
Claimant: Appellant (2-R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.4(6)(a) – Department Approved Training

STATEMENT OF THE CASE:

Andy Williams filed a timely appeal from the July 25, 2008, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 7, 2008. Mr. Williams participated. Sean Wright, Chief Financial Officer, represented the employer. Exhibits One, Two, A and B were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, record of base period employment, and record of wages reported by the claimant. The administrative law judge took official notice of the June 24, 2008, reference 03, decision that approved the claimant for department approved training for the period of June 22, 2008 through August 16, 2008.

ISSUES:

Whether the claimant has met the work availability requirement of Iowa Code section 96.4(3) since he established the "additional claim" for benefits that was effective June 22, 2008.

Whether the claimant is still employed by SGS LLC under the same hours and wages as existed prior to the "additional claim" for benefits that was effective June 22, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andy Williams commenced his employment with SGS, L.L.C., on January 7, 2008 and has worked for as a part-time, on-call laborer. At the beginning of the employment, Jobsite Superintendent Danny Booth told Mr. Williams that he could expect to be called to work one day per week, but that the employer may eventually need him to work more days per week. During the first six weeks of the employment, Mr. Williams worked one day, eight hours, per week. Mr. Williams' weekly hours then increased to two to three days, 16 to 23.5 hours, during the next three weeks. The next week, Mr. Williams' hours fell back to one day, eight hours. The next week, Mr. Williams increased to two days, 16 hours, before falling back to one day, eight hours, for the week that ended March 29, 2008. Mr. Williams then received no hours until April 23, 2008. Mr. Williams had continued to look for full-time employment while he worked in the part-time,

on-call position at SGS. On April 4, Mr. Williams had started a property maintenance job at Schultz Properties, where he worked 25 to 40 hours per week. When the property manager at Schultz Properties quit, Mr. Williams stepped into the property manager position. At the end of May, Mr. Williams voluntarily quit the employment at Schultz Properties.

Mr. Williams worked a wide range of hours at SGS after he started to receive hours again at the end of April. During his first week back on the schedule, April 23-29, Mr. Williams worked 37.5 hours. During his second week back on the schedule, April 30-May 6, Mr. Williams worked eight hours. On Monday, May 12 and Monday-Thursday, May 19-22, Mr. Williams told SGS that he was unavailable for work because he was working at his other job. Mr. Williams next worked for SGS at the end of May, May 28-June 3, 11.5 hours. On June 3, Mr. Williams left work early for personal reasons. Mr. Williams worked 29.5 hours during the period of June 4-10. Mr. Williams left work early on June 4 to attend to his college studies. Mr. Williams notified the employer he could not work on June 5 because of his college studies. Mr. Williams worked 36 hours during the period of June 11-17. Mr. Williams worked 15.75 hours during the period of June 18-24. On June 20, Mr. Williams told SGS he could not work because of his college studies. On June 20, Mr. Williams notified the employer he could thereafter only be available for work Monday through Wednesday because of his college studies. Mr. Williams has received no more work from SGS since the pay period that ended June 24, 2008. The employer continues to consider Mr. Williams a part-time, on-call employee, but has elected not to use Mr. Williams because of the limits he has placed on his availability for the part-time, on-call work.

At the beginning of June 2008, Mr. Williams enrolled in an Associate of Applied Science in Business program through Kaplan University in Davenport. Mr. Williams' first term of courses began on June 4-5 and ended on August 7-11. Mr. Williams carried 12 semester hours and was a full-time student.

Mr. Williams established an additional claim for benefits that was effective June 22, 2008. Mr. Williams earned "base period" wages during the fourth quarter of 2006 and the first, second, and third quarter of 2007. Workforce Development records indicate that the base period wages are not from on-call employment. SGS, L.L.C., is not a base period employer in connection with Mr. Williams' current benefit year, which started on January 6, 2008 and will end on or about January 4, 2009. On June 24, 2008, a Workforce Development representative entered a reference 03 decision that approved Mr. Williams for Department Approved Training (D.A.T.) from June 22, 2008 through August 16, 2008. The Workforce Development representative indicated that Mr. Williams was approved for benefits, provided he met all other eligibility requirements.

On or about July 24, 2008, Mr. Williams commenced new, part-time employment at the Super 8 motel in Davenport. Mr. Williams works 15 hours per week in the new employment.

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.

Workforce Development rule 871 IAC 24.23(26), provides as follows:

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

24.23(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 weight of the evidence in the record indicates that Mr. Williams is no longer employed by SGS under the same hours as existed prior to June 22, 2008. This conclusion is supported by the fact that SGS has not called Mr. Williams to work since June 24, 2008 and by the employer's testimony that the employer elected not to use Mr. Williams because of his limited availability. The evidence indicates that as of June 20, Mr. Williams continued to be available to work for the employer Monday through Wednesday on a part-time, on-call basis. Because Mr. Williams is no longer working in the part-time, on-call position under the same conditions as existed prior to June 22, 2008, the availability disqualification set forth in 871 IAC 24.23(26), above, does not apply. Mr. Williams would be eligible for benefits, provided he is otherwise eligible.

Because there has been a separation from the employment, this matter will need to be remanded to the Workforce Development Claims Division for determination of the effect of the employment separation on Mr. Williams' benefit eligibility and the employer's future liability for benefits paid to Mr. Williams.

The employers with potential liability for benefits paid to Mr. Williams during the current benefit year are those employers for whom Mr. Williams worked during the fourth quarter of 2006 and the first, second, and third quarter of 2007. These are the "base period" employers for purposes of the benefit year that started for Mr. Williams on January 6, 2008 and that will end on or about January 4, 2008. SGS is not a base period employer. Accordingly, SGS is not subject to being charged for any benefits paid to Mr. Williams during the current benefit year. See Iowa Code section 96.7(2)(a).

Workforce Development rule 871 IAC 24.23(5), provides as follows:

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

24.23(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.

However, the law provides an exception to this disqualification provision for persons approved for department approved training. The evidence indicates that Mr. Williams was approved for department approved training effective June 22, 2008 and through August 16, 2008.

Iowa Code section 96.4(6)(a) provides as follows with regard to department approved training:

An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

Workforce Development rule 871 IAC 23.43(7) provides as follows:

Department-approved training. A claimant who qualifies and is approved for department-approved training (see rule 871-24,39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

Because Mr. Williams has been approved for department approved training from June 22, 2008 through August 16, 2008, the work availability and work search requirements of Iowa Code section 96.4(3) are waived so long as Mr. Williams continues to fulfill, in good faith, his academic pursuits during the affected period. Similarly, the disqualification provision set forth at 871 IAC 24.23(5) does not apply for the period covered by decision approving department approved training. No employer will be charged for benefits paid to Mr. Williams during the period in which he is approved for department approved training. Mr. Williams is eligible for benefits for the period of June 22, 2008 through August 16, 2008, provided he is otherwise eligible.

Because this decision is being entered after August 16, 2008, this matter will be remanded for determination of whether Mr. Williams is able and available for work on or after August 18, 2008.

DECISION:

The Agency representative's July 25, 2008, reference 04 decision is reversed. The claimant is no longer employed in the part-time, on-call employment in the same capacity as existed prior to his additional claim for benefits. The claimant has been approved for department approved training for the period of June 22 through August 16, 2008. The claimant is eligible for benefits, provided he is otherwise eligible.

REMAND:

Because there has been a separation from the employment, this matter is remanded to the Claims Division for determination of the effect of the employment separation on Mr. Williams' benefit eligibility, effective June 22, 2008, and determination of the employer's liability for benefits paid to Mr. Williams after the expiration of the current benefit year.

Because this decision is being entered after the expiration of the period covered by the June 24, 2008, reference 03, decision approving department approved training, this matter is remanded for determination of whether Mr. Williams is able and available for work on or after August 18, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css