

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES M GAYE
Claimant

BRIDGESTONE AMERICAS TIRE
Employer

APPEAL 19A-UI-01437-LJ

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
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 February 13, 2019, (reference 08) unemployment insurance decision that denied benefits based upon a determination that claimant is working enough hours to be considered employed. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on Friday, March 8, 2019. The claimant, James M. Gaye, participated. The employer, Bridgestone Americas Tire, sent in written notice that it would not be participating in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally or partially unemployed effective January 13, 2019?
Is the claimant able to work and available for work effective January 13, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a booker on tuber 7, from October 1, 2018, until on or about December 17, 2018, when he separated from employment. This separation has not yet been the subject of a fact-finding interview with Iowa Workforce Development.

During the week of January 7 through 11, claimant was waiting to hear from Bridgestone to see if he was still employed. He was not looking for any additional work that week. Since January 13, 2019, claimant has been actively and earnestly seeking work. He has applied for at least two jobs each week, and he is also working with a union representative to find work. Claimant is a CNA, and he also has experience with customer service and production/warehouse work. Claimant recently turned down a job in Cedar Rapids with Whirlpool, as his transportation is not reliable on the highway. Claimant explained that he has a functioning car, but it is not able to travel at speeds higher than 45 miles per hour.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is totally unemployed. Claimant was not available for work during the one week ending January 12, 2019; effective January 13, 2019, he was able to and available for work. Benefits are allowed, provided he is otherwise eligible.

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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the administrative record shows that claimant has not performed any work or earned any wages

since reopening his claim effective January 13, 2019. The administrative law judge finds that claimant is totally unemployed.

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.

Iowa Admin. Code r. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. During the one week ending January 12, 2019, claimant was waiting for Bridgestone to call him about coming back to work. Claimant's own testimony establishes that he was not available for work during that week.

Claimant provided unrefuted testimony that he is able to and available for work effective January 13, 2019. While claimant's mode of transportation is not reliable to take him out of town, he lives in the largest metropolitan area in the state and his car is able to get him around throughout the greater Des Moines area. Claimant is actively and earnestly seeking work in a variety of fields in which he has experience. Accordingly, benefits are allowed, provided he is otherwise eligible.

The Benefits Bureau has not yet held a fact-finding interview regarding claimant's separation from this employer. This matter will be remanded for further investigation of this issue.

DECISION:

The February 13, 2019, (reference 08) unemployment insurance decision is modified in favor of claimant/appellant. Claimant is totally unemployed. Claimant was not available for work during the one week ending January 12, 2019. Effective January 13, 2019, claimant is able to work, available for work, and actively and earnestly seeking work. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant's separation from employer Bridgestone Americas Tire is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn