

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM H MCCLENNAN
Claimant

APPEAL 19A-UI-00949-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/14/18
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 28, 2019, (reference 04) unemployment insurance decision that denied benefits based upon a determination that he was not available for work the week ending November 24, 2018. The claimant was properly notified about the hearing. A telephone hearing was held on February 18, 2019. Claimant participated and testified.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending November 24, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was traveling out of state, to Santa Barbara, California, from Friday, November 16, 2018 through Friday, November 23, 2018. Claimant was visiting Santa Barbara because two of his children live there and it was the week of Thanksgiving. Claimant testified he was also looking into the job market in California while he traveled, but did not use his trip to make any job contacts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for the period in question.

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".

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(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant was out of town, in California, visiting his children for the Thanksgiving holiday from November 16 through November 23, 2018. While claimant may have been looking into the job market in California while he traveled, he did not make any work contacts during his trip, indicating its primary purpose was personal in nature. As such, claimant was not available for work during the week in question. Accordingly, he is not eligible for unemployment insurance benefits for the week ending November 24, 2018.

DECISION:

The January 28, 2019, (reference 04) unemployment insurance decision is affirmed. The claimant was not able to work and available for work for the one week ending November 24, 2018. Benefits are withheld for the period in question.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs