

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRISTOBAL MAGANA
Claimant

ESA INC
Employer

APPEAL 16A-UI-02003-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/11/15
Claimant: Respondent (4)

Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer/appellant filed an appeal from a decision of a representative dated February 15, 2016, reference 01, which found the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was scheduled and held on March 10, 2016. Claimant participated personally and through a Spanish language interpreter with CTS Language Link. Employer participated through Office Managers Teresa Matthews and Susan Edwards. The administrative law judge takes official notice of the claimant's administrative file.

ISSUES:

Did the claimant refuse to apply for or accept an offer of suitable work?

Is the claimant able to and available for work?

Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed since sometime in 2000 and continues to be employed full time as foreman for this company. However, in the past few years work has slowed down. As of December 31, 2015, there was no work available for the claimant because business at the company was slow.

On or about January 14, 2016, claimant received a call from his family in Mexico that his grandmother was ill. Claimant contacted his employer the following day, on January 15, 2016, to let them know that he would need to travel to Mexico to be with his grandmother during her last illness. The employer agreed to the claimant taking this trip and took him off of the schedule while he was in Mexico. Claimant was gone to Mexico from January 15, 2016 until January 24, 2016. On February 4 or 5, 2016, claimant contacted his employer and advised that he was back and available for work. He was put on the schedule and went back to work starting

February 8, 2016. He continues to work for this employer, but often works only two or three days per week.

During the time claimant was away visiting his family, work for this employer was available. The employer had full-time work available beginning on January 15, 2016 and each work week thereafter until February 8, 2016 when the claimant went back to work. Claimant notified his employer that he was available for work and was immediately put back on the schedule.

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 while he was in Mexico. Benefits are denied for the weeks ending January 23, 2016; January 30, 2016; and February 6, 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Claimant visited his family in Mexico from January 15, 2016 and was unavailable for work until February 8, 2016. He was available the majority of the benefit week ending January 16, 2016. Claimant was not available for work during the benefit weeks ending January 23, 2016; January 30, 2016 or February 6, 2016. Since the claimant was not able to or available for work during these three weeks, benefits are denied during this time period.

The claimant received benefits he was not entitled to receive, because he was not able and available for work during the three weeks listed above. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The claimant is obligated to repay the benefits he received.

DECISION:

The February 15, 2016, (reference 01) decision is modified in favor of the appellant employer. The claimant was not able to work and available for work effective the benefit weeks ending January 23, 2016; January 30, 2016 and February 6, 2016. Claimant is available for work and able to work after those dates, and has worked for this employer beginning on February 8, 2016.

Benefits are denied for those three weeks that the claimant was not available for work. The claimant was overpaid unemployment insurance benefits in the amount of \$1,329.00, and is obligated to repay the agency those benefits.

Dawn Boucher

Decision Dated and Mailed

db/css