IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

MATTHEW STRUCHEN
Claimant

APPEAL NO: 14A-UI-12464-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF STORM LAKE
Employer

**OC: 11/16/14
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 26, 2014, reference 01, decision that determined he was required to make work searches. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 23, 2014. The claimant participated in the hearing. Jane Hill, Human Resources Assistant; Pat Kelly, Public Works Director; and Jennifer Movall, Finance Manager; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and is required to make two work searches per week.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired by the City of Storm Lake as a seasonal dredge deck hand and pilot boat worker March 31, 2014. He was laid off due to the weather and resulting lack of work November 9, 2014. He will return to his previous position sometime in the spring of 2015. Under the rules of the City he must reapply for his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is required to make work searches during his period of unemployment.

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 Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Code section 96.19(38)(c) defines total and partial unemployment and states, "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." 871 IAC 24.23(21) asserts, "The following are reasons for a claimant being disqualified for being unavailable for work. (21). "Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers," he is not considered able and available for work. Finally, 871 IAC 24.23(27) states, "Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during that period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work."

While the claimant will be returning to work for the City of Storm Lake sometime in the spring of 2015, his last day worked was November 9, 2014. A temporary layoff of more than four consecutive weeks is considered total unemployment and requires that an employee make work searches, even if he will be returning to his previous job the next season. A claimant who is waiting to return to work for a specific employer and will not accept other positions in the meantime is not considered able and available for work as required to be eligible for unemployment insurance benefits.

The claimant does not want to make the two required work searches per week because he will be returning to his job with the City of Storm Lake. Under Iowa law, however, he is required to make two work searches per week, keep a record of his work search contacts, and provide that information to the Department upon request, to be considered able and available for work, which is required in order for a claimant to receive unemployment insurance benefits. The claimant must make his two work searches every week and report those searches to the Department when asked. Benefits are allowed, provided the claimant remains able and available for work by making the required work searches.

DECISION:

The November 26, 2014, reference 01, decision is affirmed. The claimant must make the two required work searches per week in order to be considered able and available for work and to continue receiving unemployment insurance benefits. Benefits are allowed, provided the claimant makes his required work searches during his period of unemployment, makes a record of his work search contacts, and provides that information to the Department upon request.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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