

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN G ALSTON
Claimant

CINTAS CORPORATION NO 2
Employer

APPEAL 19A-UI-03516-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/24/19
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:

On April 29, 2019, Kevin G. Alston (claimant) filed an appeal from the April 19, 2019, reference 02, unemployment insurance decision that denied benefits for the week ending March 30, 2019 based upon the determination he worked enough hours to be considered employed. After due notice was issued, a hearing was held in Des Moines, Iowa at 1:05 p.m. on May 15, 2019 and was consolidated with the hearings for appeals 19A-UI-03515-SC, 19A-UI-03517-SC, and 19A-UI-03518-SC. The claimant participated. Cintas Corporation No 2 (employer) did not respond to the hearing notice and did not participate. The Claimant's Exhibit A was admitted into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work during the week ending March 30, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on April 10, 2018 as a full-time loader. He filed his claim for benefits effective March 24, 2019 and his weekly benefit amount is \$369.00. The claimant worked his full-time hours for the week ending March 30. He earned gross wages in the amount of \$529.88.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work during the week ending March 30, 2019. Benefits are denied.

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 provides, in relevant part:

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 provides, in relevant part:

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

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from 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. The claimant was not considered available for work because he worked to such a degree that week that he was removed from the labor market. Accordingly, he is not eligible for unemployment insurance benefits. Benefits are denied for the week ending March 30, 2019.

DECISION:

The April 19, 2019, reference 02, unemployment insurance decision is affirmed. The claimant was not available for work during the week ending March 30, 2019. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn