

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JARED J GROW
Claimant

BOMGAARS SUPPLY INC
Employer

APPEAL 18A-UI-08235-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/17/18
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 23, 2018, (reference 1), unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 23, 2018. Claimant participated. Employer did not participate.

ISSUE:

Is the claimant able to and available for work effective June 17, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is still an employee of the employer. On or about May 10, he was arrested and charged with operating under the influence and interference with official acts while on his own time and in his vehicle. When his employer learned of the charges, they put him on a leave of absence. Claimant last worked on May 10, 2018. The claimant does not drive for work and his failure to have a current valid driver's license does not affect his ability to get to and from work as he has made arrangements for rides until he can obtain a work permit to drive.

The employer specifically told the claimant that when he had resolved his legal issues, he should come back to them and at that time they would put him back to work. The employer would have no way of independently knowing when the claimant's legal issues are resolved. The claimant resolved his legal issues on August 14 or 15 when he signed all the paperwork in his attorney's office. The claimant has not yet returned to his employer to ask to be put back to work, despite the fact that the employer specifically told him to return when his legal issues were resolved.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work from June 17, 2018 up until August 14, 2018.

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".

The claimant was put on a leave of absence at the employer's discretion. Claimant could have continued to work while he resolved his legal issues from May 10 to August 14, 2018. The claimant did not have to maintain a valid driver's license in order to maintain his employment. The claimant was able to and available for work during that time period.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

However, the claimant was told to return to the employer to let them know when his legal issues were resolved and he would be put back to work. The claimant has not returned to the employer to tell them his issues are resolved. Had he done so he would have been put back to work on August 14. The claimant is thus not working the hours that would be available for him had he just simply told the employer he had resolved his issues so that he could work. Under these circumstances, the claimant is not considered able to and available for work effective August 14, 2018. Benefits are denied effective August 14, 2018.

DECISION:

The July 23, 2018, (reference 01), decision is modified in favor of the claimant. The claimant is able to work and available for work effective June 17, 2018 until August 14, 2018. Benefits are allowed for that time period. Benefits are denied effective August 14, 2018.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/scn