

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ANTHONY A NUTTING**  
Claimant

**APPEAL NO: 13A-UI-13842-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/03/13  
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.2(1)e – Failure to Report

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 13, 2013, (reference 04), decision that denied benefits based upon a failure to report. After due notice was issued, a telephone conference hearing was scheduled to be held on January 13, 2014. Claimant participated.

**ISSUES:**

Is the claimant able to and available for work?  
Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The administrative record does not contain a copy of the notice to report purportedly mailed to the claimant after he filed his claim with an effective date of November 3, 2013. However, claimant was incarcerated from early November through the first week of December 2013. He reopened his claim on December 15, 2013.

**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.

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".

871 IAC 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(12) provides:

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

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

(12) If a claimant is in jail or prison, such claimant is not available for work.

There is no evidence of the notice to report in the administrative record, but claimant was not available for work from November 3, 2013, to December 14, 2013, because of being incarcerated. As of December 15, 2013, claimant is considered able to and available for work.

**DECISION:**

The December 13, 2013, (reference 04) decision is modified in favor of the appellant. The claimant is not able to work and available for work from November 3, 2013, to December 14, 2013. He is able to work and available for work effective December 15, 2013, and benefits are allowed as of that date, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs