

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY L HOOTEN**  
Claimant

**APPEAL NO. 12A-UI-09247-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AL-JON MANUFACTURING LLC**  
Employer

**OC: 05/06/12**  
**Claimant: Appellant (3)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Randy Hooten filed a timely appeal from the July 27, 2012, reference 02, decision that denied benefits effective May 20, 2012 based on an agency conclusion that he was not available for work due to a self-employment venture. After due notice was issued, a hearing was held on August 23, 2012. Mr. Hooten participated and presented additional testimony through his stepson, Shawn Hartman. Don Prox, C.F.O and Human Resources Director, represented the employer and presented additional testimony through Bill Pumphrey, Welding Superintendent. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the agency's record (DBRO) of benefits disbursed to the claimant and other data on the DBRO pertaining to the claim.

**ISSUE:**

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Randy Hooten established a claim for unemployment insurance benefits that was effective May 6, 2012 and received benefits for ten weeks between May 6, 2012 and July 21, 2012. Mr. Hooten continued his claim through the benefit week that ended September 1, 2012 and then discontinued his claim.

In July 2011, Mr. Hooten purchased a building in Ottumwa with the intention of opening a pet store. On April 7, 2012, Mr. Hooten and his wife opened a pet store named Randy's Pet Shop. The store was opened prior to Mr. Hooten's voluntary separation from his most recent employment, a full-time welding position at Al-Jon Manufacturing, L.L.C., in Ottumwa. The hours of operation for Mr. Hooten's pet shop started as 10:00 a.m. to 6:00 p.m., Monday, Tuesday, Thursday, Friday, and Saturday, and 11:00 a.m. to 3:00 p.m. on Sunday. The hours have since been changed to 10:00 a.m. to 6:00 p.m., Monday through Saturday. Mr. Hooten estimates that he spent ten hours per week at the business prior to separating from his employment at Al-Jon Manufacturing. The store is approximately 1,200 square feet and carries

fish, reptiles, various rodents, ferrets, birds, kittens, puppies and supplies for the same. Mr. Hooten estimates daily revenue at \$75.00 to \$300.00. Mr. Hooten's spouse is the business' bookkeeper. Mr. Hooten has \$35,000.00 invested in the enterprise. Mr. Hooten asserts that any revenue goes into the building, though this is implausible, given his estimate of revenue and the apparent low cost of the building. Mr. Hooten asserts that he spends less time, only two to eight hours per week, at the store since he separated from his employment at Al-Jon Manufacturing. Mr. Hooten asserts that he only goes to his store "every now and then to check on things." Both assertions are implausible. Mr. Hooten feeds animals and helps with ordering. Mr. Hooten's spouse, stepson, granddaughter, sister, niece and nephew, and additional volunteers assist with the store. Mr. Hooten's stepson, Shawn Hartman, is unemployed and "volunteers" at the store 30 to 35 hours per week. Mr. Hooten's spouse suffered from a broken wrist from May 1 through August 15, 2012. Mr. Hooten's spouse has been laid off from her position at John Deere and is due to return to that employment on October 1, 2012.

Mr. Hooten is a welder by trade, studied welding at a junior college, and has been in the welding trade for 28 years. Mr. Hooten's most recent employment as a welder was with Al-Jon Manufacturing in Ottumwa. Mr. Hooten's wage at Al-Jon Manufacturing was \$19.25 per hour. Mr. Hooten voluntarily separated from that employment on May 8, 2012. Mr. Hooten resides in Ottumwa. Mr. Hooten indicates that welders usually find work through Workforce Development, through the Internet, or by traveling in-person to businesses that employ welders. However, Mr. Hooten applied for *no* welding jobs from the time he established his claim for unemployment insurance benefits in early May 2012 until August 20, 2012, when he applied for a welding position at the John Deere plant in his hometown, Ottumwa. Prior to submitting his application on August 20, Mr. Hooten relied upon his wife's representation that the John Deere plant was not hiring, though his wife does not have anything to do with the hiring. His wife works in the parts department. Additional manufacturers in nearby communities that utilize welders include Rockwell Collins and Dexter Foundry in Fairfield, Vermeer Manufacturing in Pella, and Railco in Albia. Fairfield is 24 miles from Ottumwa. Albia is 19 miles from Ottumwa.

Mr. Hooten was only able to provide limited information concerning his work search activities. During the week that ended May 26, Mr. Hooten contacted a grocery store and repair shop regarding work. During the week that ended June 2, Mr. Hooten contacted a glass installation company, a sign making company, and a Dairy Queen regarding work. During week that ended June 9, Mr. Hooten contacted the car detailing business across the street from his store, a QuikTrip, and a bar regarding work. During the hearing Mr. Hooten asserted that the rest of his job contact information was at his shop.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 administrative code section 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

24.23(7) Where an individual devotes time and effort to becoming self-employed.

24.23(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.23(19) Availability for work is unduly limited because the claimant is not willing to accept work in such claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.23(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

Mr. Hooten's testimony regarding his very limited involvement in the pet store that bears his name, for which he has purchased a building, and in which he has invested \$35,000.00, is not credible. The weight of the evidence indicates that Mr. Hooten's involvement in the self-employment enterprise is substantially greater than indicated by his testimony or the canned testimony of his stepson. The weight of the evidence also indicates that Mr. Hooten intentionally avoided making an active and earnest search for new employment from the time he filed his claim for benefits. This is evident through his failure to apply for a welding job with the

major manufacturer located in his home community until three and one-half months after he filed his claim for unemployment insurance benefits. The administrative law judge notes that the timing of that one logical application was conspicuously close to the date of the appeal hearing. Mr. Hooten's failure to make an active and earnest search for new employment is further evident from his failure to contact well-known manufacturers in nearby communities about welding jobs. Mr. Hooten's professed ignorance of such manufacturers after 28 years in the trade is not credible. Mr. Hooten voluntarily separated from a job that paid him \$19.25 an hour. Mr. Hooten's decision to apply for positions such as a counter position at Dairy Queen while forgoing contact with obvious prospective employers who hire people in his trade indicates that Mr. Hooten's work search has been disingenuous at best. Mr. Hooten has not met the availability or work search requirements since he established his claim for benefits and is not eligible for unemployment insurance benefits. Benefits are denied effective May 6, 2012 and the disqualification continued as of the August 23, 2012 appeal hearing.

**DECISION:**

The Agency representative's July 27, 2012, reference 02, is modified as follows. The claimant has not been available for work and has not engaged in an active and earnest search for new employment since establishing his claim for benefits. Benefits are denied effective May 6, 2012 and the disqualification continued as of the August 23, 2012 appeal hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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