

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT D MCDONOUGH**  
Claimant

**APPEAL NO. 12A-UI-11173-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/12/12**  
**Claimant: Appellant (4-R)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Scott McDonough filed a timely appeal from the September 14, 2012, reference 03, decision that denied benefits effective August 12, 2012 based on an agency conclusion that he was not available for work. After due notice was issued, a hearing was held on October 9, 2012. Mr. McDonough participated in the hearing. Exhibit A and Department Exhibit D-1 were received into evidence.

**ISSUES:**

Whether Mr. McDonough has been able and available for work since he established his claim for benefits. Mr. McDonough did not meet the availability requirement for the two-week period ending August 25, 2012 and is not eligible for benefits for those two weeks.

Whether Mr. McDonough is required to be able and available for work. Mr. McDonough was approved for department approved training effective August 26, 2012 and was no longer subject to the work availability or work search requirement so long as he continued to meet the requirements of the department approved training.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Scott McDonough established a claim for unemployment insurance benefits that was effective August 12, 2012. The claim was prompted by Mr. McDonough's August 14, 2012 lay-off from full-time employment with United States Cellular (employer account number 207316) and his August 12, 2012 voluntary separation from part-time, supplemental employment with Iowa Pizza Company, Inc. (employer account number 306885). On August 23, 2012, Mr. McDonough commenced college coursework at DMACC in sales management and business management. On September 17, 2012, a Workforce Development representative entered a reference 05 decision that approved Mr. McDonough for department approved training effective August 26, 2012 through December 15, 2012. Between the August 12, 2012 effective date of the claim for benefits and the DAT approval that was effective August 26, 2012, Mr. McDonough did not look for additional employment. Mr. McDonough continues in his studies at DMACC.

Mr. McDonough did not claim benefits for the weeks ending August 18 and 25, 2012. Mr. McDonough reopened his claim and commenced claiming benefits during the week that ended September 1, 2012. So, Mr. McDonough has received benefits only for the week ending September 1 and the week ending September 8, 2012.

### **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.

The evidence in the record indicates that Mr. McDonough did not meet the work availability requirement during the weeks that ended August 18 and August 25, 2012. During that period, Mr. McDonough did not seek new employment. During that period Mr. McDonough was preparing to commence his college coursework. Mr. McDonough was not eligible for benefits for the weeks ending August 18, 2012 and August 25, 2012. However, Mr. McDonough did not continue his claim during those two weeks.

Iowa Code section 96.4(6)(a) provides as follows:

An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied

benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

Mr. McDonough has been approved for DAT effective August 26, 2012, and continues. During that the period covered by the DAT, Mr. McDonough is not required to be available work or to engage in a work search. In other words, effective August 26, 2012, the availability and work search requirements of Iowa Code section 96.4(3) do not apply to Mr. McDonough so long as he continues to meet the requirements of DAT approval. Mr. McDonough is eligible for benefits effective August 26, 2012, provided he is otherwise eligible.

This matter will be remanded to the Claims Division for entry of a decision that amends the September 24, 2012, reference 07 overpayment decision in light of the present decision.

**DECISION:**

The Agency representative's September 14, 2012, reference 03, is modified as follows. The claimant was not available for work for the two-week period that ended August 25, 2012 and is not eligible for benefits for those two weeks. The claimant was approved for department approved training effective August 26, 2012 and was thereafter no longer subject to the work availability or work search requirement so long as he continued to satisfy the requirements to be eligible for department approved training. Effective August 26, 2012, the claimant was eligible for benefits, provided he was otherwise eligible.

This matter is remanded to the Claims Division for entry of a decision that amends the September 24, 2012, reference 07 overpayment decision in light of the present decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs