

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON WATTS
Claimant

APPEAL NO: 09A-UI-16100-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 09/13/09
Claimant: Appellant (4)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Jason Watts (claimant) appealed an unemployment insurance decision dated October 15, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was limiting his availability to work with Per Mar Security and Research Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 23, 2009. The claimant participated in the hearing with his father, Williams Watts. The employer participated through Sheryl McFall, Human Resources and Wendy Larison, Security Coordinator. Employer's Exhibits One and Two and Claimant's Exhibits A, B, C, and D were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time security officer from March 2, 2007 through November 1, 2009. He was hired to work with client Cornell College and worked full-time hours until September 14, 2009 when the client's needs changed and the claimant's hours were reduced to 16 per week. The claimant tried to get more hours but the employer had no other assignments available.

On September 14, 2009 the claimant advised the employer he would be moving from Cedar Rapids, Iowa to Ottumwa, Iowa within the next year. He questioned the employer about transferring to the Ottumwa office and was told that the employer would look into it. The claimant's last day of work was on October 24, 2009. He submitted a termination notice on November 1, 2009 stating that he found other employment effective October 19, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

871 IAC 24.23(23) provides:

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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The employer's client reduced the claimant's hours from 40 to 16 effective September 14, 2009. The claimant was available to work more hours and requested more hours but no additional work was provided. Consequently, he does meet the availability requirements of the law for the five-week period ending October 17, 2009. The claimant is qualified for benefits during this same time frame, provided he is otherwise eligible.

The claimant found other employment effective October 19, 2009 and does not meet the availability requirements after that date because he is working. Therefore, benefits are denied as of the week ending October 24, 2009.

DECISION:

The unemployment insurance decision dated October 15, 2009, reference 01, is modified in favor of the appellant. The claimant qualifies for unemployment insurance benefits for the five-week period ending October 17, 2009, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs