

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN W MOHR
Claimant

APPEAL NO. 15A-UI-10494-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN DREAM HOME IMPROVEMENT
Employer

OC: 02/22/15
Claimant: Appellant (2-R)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Steven Mohr, the claimant, filed a timely appeal from a representative's decision dated September 14, 2015, reference 04, which denied unemployment insurance benefits as of May 17, 2015 finding that the claimant was not able to perform work due to injury. After due notice was provided, a telephone hearing was held on October 1, 2015. Mr. Mohr participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Steven Mohr filed a claim for unemployment insurance benefits with an effective date of February 22, 2015 after being separated from his previous employment with Economy Coating Company. Mr. Mohr claimed and received unemployment insurance benefits for the weeks ending May 23, 2015 through July 11, 2015. Mr. Mohr began new employment with American Dream Home Improvement company at the end of the first week of July 2015. Mr. Mohr testified that he left his employment with American Dream Home Improvement by quitting employment with that company on July 22, 2015.

Mr. Mohr asserts that he was not employed by American Dream Home Improvement or any other employer during the period of February 26, 2015 until early July 2015 when he accepted employment with American Dream Home Improvement.

It is the claimant's sworn testimony that he suffered no work injuries while employed by American Dream Home Improvement company and there had been no issues with his availability or ability to work either during the time that he had been unemployed until accepting employment with American Dream Home Improvement or during the period that he worked for that company.

In its response to a notice of claim filed, American Dream Home Improvement asserted that Mr. Mohr was still employed by the company but was not working due to a work injury that had taken place earlier in the year. In response to the employer's protest of Mr. Mohr's claim, a fact-finding call was scheduled to obtain additional information from the parties. The employer participated and asserted that the claimant had never been separated from employment but that he was not working due to a work injury that occurred on May 20, 2015. Mr. Mohr was unaware of the scheduled adjudicator's call and did not participate. Although questioned at length, the claimant maintains that he was not employed with American Dream Home Improvement during the time the employer alleges he sustained a work injury. The claimant further denies that he sustained any type of a work injury either before or after being employed by American Dream Home Improvement company and that he has, in fact, been separated from employment with that company by quitting employment on July 22, 2015.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was able and available for work as of May 17, 2015. It does.

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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

In this matter, Mr. Mohr participated personally and testified under oath and answered questions. Although duly notified, the employer did not participate in the administrative hearing. The administrative law judge finds the claimant's testimony to be credible and not inherently improbable.

The administrative law judge concludes based upon the evidence in the record that Mr. Mohr has met his burden of proof to establish that he was able to work and available for work during the period beginning May 17, 2015 through July 11, 2015. Claimant denies the employer's

assertion that he was employed by American Dream Home Improvement at the time the company alleges that he had suffered a work-related injury. Claimant also disputes the employer's assertion that he remains employed with the company at the time of hearing. Agency wage records do not reflect any wages reported by American Dream Home Improvement for the second quarter of 2015.

For the reasons stated above, the administrative law judge concludes that the claimant has established that he has been able and available for work and eligible to receive unemployment insurance benefits for the period May 17, 2015 through July 11, 2015. Claimant is eligible to receive unemployment insurance benefits, provided he has met all other eligibility requirements of Iowa law.

Based upon the evidence in the record, the administrative law judge concludes that there may have been a job separation by the claimant from employment with American Dream Home Improvement that has not been reported to or adjudicated by Iowa Workforce Development. This issue is, therefore, remanded to the Claims Division for investigation and if a separation has taken place, the issuance of an appealable determination on that job separation.

DECISION:

The representative's decision dated September 14, 2015, reference 04, is reversed. Claimant is able and available for work and eligible to receive unemployment insurance benefits as of May 17, 2015, providing that he has met all other eligibility requirements of Iowa law.

The issue of whether a job separation has taken place and whether it is disqualifying is remanded to the Claims Division for investigation, and if a separation has taken place, the issuance of an appealable determination on the job separation.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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