

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRUCE A JOHNSON
Claimant

APPEAL NO. 18A-UI-10255-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/16/18
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated October 5, 2018, reference 3, that concluded he was not eligible to receive unemployment insurance benefits. A telephone hearing was held on October 26, 2018, pursuant to due notice. The claimant participated personally.

ISSUE:

The issue is whether the claimant is able and available for 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 started work on July 17, 2017, as a full-time customer service representative. The claimant signed for receipt of the employer's handbook on July 13, 2017, prior to his first day of work. The employer's attendance policy indicates that five absences within a six-month period would result in termination from employment.

The claimant properly reported all his absences. He left work early on August 13, 2018, for an unknown reason. On August 20, 2018, the claimant applied for leave of absence (LOA) because his father-in-law, in Texas, had a stroke and was on life support. He was absent on August 22, 23, and 24, 2018, while he and his wife made end of life decisions in Texas. The father-in-law passed away and the claimant was granted bereavement leave from August 25 to September 4, 2018. On September 5, 2018, the claimant returned to work and the employer issued him a final written warning for his absence on August 22, 23, and 24, 2018. During the issuance of the warning the employer notified the claimant that the LOA application was rejected and that further infractions could result in termination from employment. The claimant had four absences in August 2018.

On September 8, 2018, the claimant's mother-in-law was taken to the emergency room. She was in the hospital until September 17, 2018. The mother-in-law provided child care for the claimant's three-year-old son. The claimant did not have an alternate plan for child care. The claimant properly reported his absence from work on September 10, 11, 12, 13, 14, and 17,

2018. On September 17, 2018, the claimant told the employer he was unsure when he could return to work. The employer terminated the claimant for excessive absenteeism. He had six absences for lack of child care in September 2018. Later that same day, the mother-in-law was released from the hospital. On September 19, 2018, the mother-in-law was able to care for the claimant's son and the claimant was available to work.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge finds the claimant is able and available for work as of September 16, 2018.

871 IAC 24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

Iowa Admin. Code r. 871-24.22(2)c 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.

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

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). When an employee is spending working hours caring for children, he is considered to be unavailable for work. The claimant was devoting his time and efforts to caring for his child until September 18, 2018. He is considered to be available for work as of September 16, 2018. He was available for work for the lion share of the workweek starting September 16, 2018. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's October 5, 2018 decision (reference 03) is reversed. The claimant is able and available for work as of September 16, 2018. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs