

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**JASON VEN DER VEER
301 HIGH STREET
CHILLICOTHE IA 52548**

**INVESTIGATIONS AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319**

DAN ANDERSON, IWD

Appeal Number: 05-IWDUI-0945

OC: 06/20/04

Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

May 20, 2005

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.23(25) – Availability Disqualifications/Out of Town

STATEMENT OF THE CASE:

The claimant filed an appeal from a Iowa Workforce Development Department decision dated April 27, 2005, reference 06 that disqualified the claimant from receiving benefits for a period from April 3, 2005 to April 9, 2005 due to being out of town for the majority of the work week.

The hearing was held pursuant to due notice on May 16, 2005, by telephone conference call. The claimant participated. Karen von Behren, Investigator, participated on behalf of Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective June 20, 2004. The claimant has a work history of being a nursing home administrator. The claimant did file a claim for benefits as to the week ending June 26, but he received no benefits due to being re-employed and receiving excessive earnings. More recently, the claimant worked as an administrator for the Griffin Nursing Home from late June 2004 to December 20, 2004.

The claimant owns a diesel pick-up truck. When the claimant was unsuccessful in obtaining employment as a nursing home administrator, he became a driver-contractor for Hoosier RV Transport by leasing his pick-up with the company to use in the delivery of travel-trailers on February 3, 2005. The claimant needed income to provide medical insurance coverage for his family, and he took this work to provide that income during the period he continued to look for work as a nursing home administrator.

The claimant checked with his local workforce center in Oskaloosa, Iowa that he later confirmed by the workforce center in Ottumwa that he could be self-employed and continue to receive unemployment benefits. The claimant understood that he did not have to claim his earnings from self-employment while he claimed for and received unemployment.

The claimant made cross-country deliveries for Hoosier Transport on a regular basis for a ten-week period ending April 2, 2005. The claimant had to deduct the fuel cost from his periodic earnings, and he was responsible for the payment of income taxes and social security.

During the ten-week period the claimant made deliveries with Hoosier Transport, he conducted his work searches by the use of resume, and he provided a cell phone number to be contacted regarding any offer of work. The claimant has a cell phone that is capable of nation-wide use, and he carried it with him on his deliveries. The claimant interviewed with Investigator von Behren by use of his cell phone while making a delivery to Ogden, Utah. The claimant was willing to interview and/or accept any offer of work during the period he worked for Hoosier Transport.

While the claimant was making a delivery for Hoosier Transport and visiting relatives in Texas for two-days during the week ending April 9, 2005, he did make a personal contact with a prospective employer in that community.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant should be disqualified as not being able and available for work due to being gone the major portion of the workweek ending April 9, 2005.

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 24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek, and is not in the labor market.

The administrative law judge concludes that the claimant was able and available for work in his regular occupation as a nursing home administrator during the week ending April 9, 2005, such that he should not have been disqualified from receiving unemployment benefits during the period. While the claimant was warned about his job search effort regarding him looking for work as an administrator, the warning post-dates the period of disqualification such that it may not be considered as a basis for that disqualification in this matter.

The claimant arranged with Hoosier Transport to make a delivery in Texas near relatives such that he could do his job and make a personal visit. There is no evidence that the claimant was not otherwise able and available to receive an employer contact about a job or respond to a job offer during this week.

DECISION:

The decision of the representative dated April 27, 2005, reference 07, is REVERSED. The claimant was able and available for work during the week ending April 9, 2005, such that no disqualification should be imposed.

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