

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NABIL H MERI
Claimant

APPEAL 16A-UCFE-00024-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/19/16
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(27) – Active and Earnest Search for Work
Iowa Admin. Code r. 871-24.39(2) – Department Approved Training (DAT)

STATEMENT OF THE CASE:

During the hearing on another matter, claimant appealed the September 7, 2016, (reference 11) unemployment insurance decision that denied unemployment insurance benefits because of no work search for the week-ending August 20, 2016. He waived notice of the hearing and the matter was addressed in a telephone hearing was held on September 8, 2016, along with another issue appealed. See, 16A-UCFE-00023-DL-T. Because the September 8, 2016 (reference 12) covers the identical issue for the following week, that matter is also resolved here. The claimant participated through a CTS Language Link Arabic interpreter. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE:

Did the claimant make an adequate search for work the two weeks ending August 27, 2016?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed an application for Department Approved Training (DAT) related to English as a Second Language (ESL) classes on August 10, 2016. The application form states that work searches are required *after training*. (Emphasis added.) DAT was approved effective September 3, 2016, even though claimant began classes on August 29, 2016. The document does not state that the applicant must continue to make work searches after the application is submitted and until the training begins. (Administrative record.) Claimant required the assistance of an interpreter at hearing. There is no evidence that work search requirements between the DAT application and effective date was explained to him through an interpreter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has presented a good-cause reason for the failure to make an active and earnest search for work for the two weeks in question.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Because of the language barrier claimant reasonably believed that since he had already filed his application for DAT, that work searches were not required. Accordingly, benefits are allowed.

DECISION:

The September 7, 2016, (reference 11) and September 8, 2016, (reference 12) unemployment insurance decisions are reversed. The claimant has presented a good-cause reason for having not made work searches during the two weeks ending August 27, 2016. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs