

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYAN PILCHER
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 16A-UI-04409-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/15
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 11, 2016, (reference 03) unemployment insurance decision that denied benefits as of March 20, 2016. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2016. Claimant participated. Attorney Michelle Hoyt participated on behalf of claimant. Dustin Shepherd testified on behalf of claimant. Employer participated through Steve Volle and administrative assistant, Joy Hol.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from his last assignment at Pioneer on March 18, 2016. Claimant contacted the employer on March 21, 2016. Claimant stated he had to call within three business days to request work. Claimant did not request an additional business assignment. Ms. Hol asked claimant if he was looking for work and he responded no. Claimant told Ms. Hol that he had a bad vehicle and could not travel. Claimant did not say anything to Ms. Hol about not having a license. The employer marked claimant down as not available for work. Claimant has not re-contacted the employer. The employer had work available in other locations; two of them are within approximately twenty miles of Ottumwa.

If claimant told the employer that he was available for work, then they would have worked to find him an assignment. The employer always documents when an employee calls in and what the call is about. The employer shows nothing since March 21, 2016. If the employee comes into the employer, then it is marked as a face-to-face.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work for the period in question.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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(4) and (18) provide:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant's argument that on March 21, 2016, he told the employer he was looking for work is not persuasive. Ms. Hol credibly testified that claimant told her that he was not looking for work, had a bad vehicle, and could not travel. Ms. Hol also testified the employer documents when an employee contacts the employer and the reason for the contact. Ms. Hol testified that claimant has not contacted the employer since March 21, 2016. Furthermore, it is noted that claimant testified he only followed up once with the employer after March 21, 2016, and that was because he received a denial of benefits from Iowa Workforce Development.

Since claimant limited the area he could work by informing the employer that he did not have transportation because he had a bad vehicle and could not travel and he told Ms. Hol that he was not looking for work, he is not considered available for work. Accordingly, benefits are denied.

DECISION:

The April 11, 2016, (reference 03) unemployment insurance decision is affirmed. Claimant is not able to work and available for work effective March 20, 2016. Benefits are denied.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css