

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANNY W FEES

Claimant

APPEAL 18A-UI-01072-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITAL LANDSCAPING LLC

Employer

OC: 12/17/17

Claimant: Respondent (2)

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

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the January 23, 2018, (reference 03) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2018. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through managing partner Phil Glaser.

ISSUE:

Is the claimant able to work and available for work effective December 17, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked 20 to 30 hours the week-ending December 23, 2017, at an hourly rate of \$22.00, which made him ineligible for benefits that week. He has not filed weekly continued claims for any other weeks. He did generally work when snow-removal work was available until January 14, 2018, when he told the employer he would be returning to jail.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective December 17, 2017.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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(23) provides:

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

(12) If a claimant is in jail or prison, such claimant is not available for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits must be able to work, available for work, and if unemployed, actively and earnestly seeking work. Claimant was not available for work effective December 17, 2017, because he was working to the extent that he was removed from the labor market, or while he was in jail.

DECISION:

The January 23, 2018, (reference 03) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective December 17, 2017.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs