

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM J BLASDELL

Claimant

APPEAL NO. 10A-UI-01480-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHENHALL'S STFFING SERVICES INC

Employer

**Original Claim: 10/04/09
Claimant: Respondent (5/R)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer appealed a representative's January 28, 2010 decision (reference 02) that concluded the claimant was eligible to receive benefits as of August 17, 2009, because it was determined he was available for work. A telephone hearing was held on March 9, 2010. The claimant did not respond to the hearing notice before the scheduled hearing by providing his phone number to call for the hearing. The claimant did not participate in the hearing. Mike Gowdy, a staffing coordinator, appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant called to participate in the hearing. The claimant asked that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Is the claimant able to and available for work as of October 4, 2009?

FINDINGS OF FACT:

The employer is a temporary staffing firm and had assigned the claimant to a job assignment. This job assignment ended on August 17, 2009, when the client had no more work for the claimant to do. This employment separation was addressed in the decision for appeal 09A-UI-17563-LT. When the claimant picked up his last paycheck from this assignment on August 28, 2009, the employer asked the claimant to keep in contact. As of August 28, 2009, the employer did not have another job to assign to the claimant.

The claimant did not contact the employer about another job until October 15, 2009. The employer learned the claimant had a claim in Illinois and did was looking for a full-time job instead of a temporary job that the employer could assign to him. The claimant established a claim in Iowa for unemployment insurance benefits during the week of October 4, 2009.

Since the claimant established his Iowa claim, he has contacted the employer at various times for a job. When the employer has a job the claimant has the skills to do, the employer tries to contact the claimant to see if he is interested in the job. As of March 9, the claimant was working for the employer at another job assignment.

A hearing notice for the March 9 hearing was mailed on February 5, 2010. The claimant thought he called in his phone number for the hearing, but he did not have a control number to verify he had contacted the Appeals Section prior to March 9, 2010. The claimant has been involved in a number of fact finding interviews since he opened his claim in Iowa and may have confused other conferences he has been involved in. By the time the claimant called the Appeals Section, the hearing had been closed and the employer had been excused.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). Since the claimant did not have a control number, there is nothing to support his claim that he called and provided his phone number to the Appeal Section prior to the scheduled March 9 hearing. The claimant intended to participate in the March 9 hearing and was waiting for an 8:00 a.m. phone call. Unfortunately, the claimant called the Appeals Section after the hearing had been closed and the employer had been excused. He did not establish good cause to reopen the hearing. Therefore, his request to reopen the hearing is denied.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. Although the employer asserted the claimant was not available for work because he did not contact the employer about a job August 28 through October 15, 2009, the claimant did not file any Iowa claims until the week ending October 10, 2009. Iowa does not have any legal jurisdiction to determine if he was available for work until October 4, 2009, when he established a claim in Iowa.

Even if Iowa had jurisdiction from August 17 through October 4, the law does not require a claimant to contact a temporary employment agency when looking for work. A claimant can decide to look for full-time work or make other job contacts. As long as a claimant is available for work and looking for work, the fact he has not contacted a temporary staffing agency does not make him ineligible to receive benefits for weeks he has filed for benefits.

After the claimant established a claim in Iowa, he contacted the employer about a job on October 15, 2009. On that day, the employer did not have anything to assign to him. Again, the fact the claimant has not contacted the temporary employment firm every week may not be the most prudent course of action if he wants to work, but the unemployment insurance law does not require a claimant to contact a temporary employment every week he files a claim for benefits. Instead, he must only be able to and available for work and actively looking for work. Iowa Code § 96.4-3.

Based on the evidence presented during the hearing, there was nothing presented to establish the claimant is not able to and available for work as of October 4, 2009. The employer testified that on November 12, the claimant declined an offer of work. Since this was not an issue noted

for the hearing, the issue of whether the claimant refused an offer of suitable on November 12 must be remanded to the Claims Section to investigate.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's January 28, 2010 decision (reference 02) is modified, but the modification has no legal consequence. Since Iowa does not have any jurisdiction to decide whether the claimant was able to or available for work as of August 17, this decision only addresses the claimant's availability as of October 4, when the claimant established an Iowa claim. As of October 4, 2009, the claimant is eligible to receive benefits. The fact he does not contact the employer every week to see if the employer has a job does not make him ineligible to receive benefits. With the exception of contacting a temporary employment firm almost immediately after finishing a job, claimants are not required under the law to regularly contact a temporary employment firm. An issue of whether the claimant refused the employer's November 12, 2009 offer of work with or without good cause is Remanded to the Claims Section to investigate.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw