

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK ALBERT
Claimant

APPEAL 20A-UI-00838-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/22/19
Claimant: Appellant (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:

On January 29, 2020, Nick Albert (claimant) filed an appeal from the January 24, 2020, reference 02, unemployment insurance decision that denied benefits for the week ending January 4, 2020 based upon the determination he was not able to or available for work. After due notice was issued, a telephone conference hearing began on February 12 and concluded on February 18, 2020; however, the record was left open until February 21, 2020 at 4:30 p.m. to allow the claimant additional time to submit documents. The hearing was consolidated with the hearings for appeals 20A-UI-00839-SC-T and 20A-UI-00840-SC-T. The claimant participated. Pohnpeian interpretation was provided by Amelia Halverson, the claimant's friend, and Sue (employee number 10262) of CTS Language Link. The Claimant's Exhibit A which was submitted on February 19, 2020 was admitted into the record. The administrative law judge took official notice of the U.S. Citizenship and Immigration Services Fact Sheet dated October 29, 2019 and titled "Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands."¹

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work during the week ending January 4, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective December 22, 2019 after he was temporarily laid off due to a plant closure. The claimant resumed work on January 6, 2020 when he was recalled to work.

¹ https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/FactSheet-Status_of_Citizens_of_Micronesia_Marshalls_Islands.pdf (last accessed February 24, 2020).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily laid off and is considered able to and available for work for the week ending January 4, 2020.

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". [Emphasis added.]

Iowa Code section 96.19(38) provides, in relevant part:

Definitions.

38. Total and partial unemployment

...

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part:

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 provides, in relevant part:

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

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was temporarily laid off for fewer than four consecutive weeks. He was available for work when work with his employer became available. Benefits are allowed for the week ending January 4, 2020 as he is considered available for work during his temporary layoff.

DECISION:

The January 24, 2020, reference 02, unemployment insurance decision is reversed. The claimant is considered available for work during his temporary layoff. Benefits are allowed for the week ending January 4, 2020.



Stephanie R. Callahan
Administrative Law Judge

February 27, 2020
Decision Dated and Mailed

src/scn