

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH C VANBLARICUM
Claimant

APPEAL NO. 16A-UI-02578-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JDB AUTO SALES INC
JD BYRIDER
Employer

OC: 01/24/16
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Joseph Vanblaricum filed a timely appeal from the February 18, 2016, reference 02, decision that denied benefits effective January 24, 2016, based on an Agency conclusion that he was unable to perform work due to injury. After due notice was issued, a hearing was held on March 22, 2016. Mr. Vanblaricum participated. Selena Castle represented the employer. Exhibit Five was received into evidence. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims for benefits.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Vanblaricum established a claim for benefits that was effective January 24, 2016, but has not received benefits in connection with the claim. Though Mr. Vanblaricum had been treated for a work related injury prior to establishing his claim for benefits, he was no longer under the care of a physician at the time he established the claim and had no medically-based work restrictions. Mr. Vanblaricum made weekly claims for the weeks that ended January 30, February 6, and February 13, 2016. Mr. Vanblaricum then discontinued his claim for benefits. Mr. Vanblaricum reported two job contacts for each of those three weeks when he made the weekly claims. At the time of the appeal hearing, Mr. Vanblaricum was only able to recall one job contact. That was a job contact he made during the week that ended January 30, 2016. Mr. Vanblaricum has not made any weekly claims since the weekly claim he made for the week that ended February 13, 2016. As of the mailing date of this decision, Mr. Vanblaricum has not taken any steps to reactivate the lapsed claim for benefits. At the time Mr. Vanblaricum established his claim, he was instructed that he was required make weekly claims to obtain benefits. That same information was set forth in the Unemployment Insurance Benefits Handbook that

Mr. Vanblaricum agreed to read, know and follow at the time he established his claim. That same requirement was repeated in the February 18, 2016, reference 02, decision and in the appeal hearing notice mailed to Mr. Vanblaricum on March 3, 2016.

REASONING AND CONCLUSIONS OF LAW:

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 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(1)a and (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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) and (35) 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.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Iowa Administrative Code section 871 IAC 24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance. 24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

The evidence in the record indicates that Mr. Vanblaricum has been physically and mentally able to perform work since he established the claim that was effective January 24, 2016. Though Mr. Vanblaricum made weekly claims for the weeks that ended January 30, February 6, and February 13, 2016, the evidence fails to establish that Mr. Vanblaricum made an active and earnest search for work during those weeks. Accordingly, Mr. Vanblaricum is not eligible for benefits for those three weeks. The evidence further indicates that Mr. Vanblaricum has not made weekly claims since he made the claim for the week that ended February 13, 2016. Accordingly, Mr. Vanblaricum is not eligible for benefits for the period that began February 14, 2016. The availability and work search disqualifications continue as of the mailing date of this decision. Mr. Vanblaricum must reactivate his claim, must make weekly claims, and must demonstrate an active and earnest search for new employment before he may be deemed eligible for benefits. Mr. Vanblaricum must meet all other eligibility requirements.

DECISION:

The February 18, 2016, reference 02, decision is modified as follows. The claimant has been physically and mentally able to perform work since he established the claim that was effective January 24, 2016. The claimant did not make an active and earnest search for work during the weeks that ended January 30, February 6, and February 13, 2016 and, therefore, is not eligible for benefits for those three weeks. The claimant has not made weekly claims since he made the claim for the week that ended February 13, 2016 and, therefore, is not eligible for benefits for the period that began February 14, 2016. The availability and work search disqualifications continue as of the mailing date of this decision. The claimant must reactivate his claim, must make weekly claims, and must demonstrate an active and earnest search for new employment before he may be deemed eligible for benefits. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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