

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY J KAYLOR
Claimant

PREMIER STAFFING INC
Employer

APPEAL 21A-UI-11408-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/19
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 23, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective May 10, 2020 due to lack of transportation. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2021. The claimant participated personally. The employer participated through witness Janelle Karrels. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records, including the ALJ decision dated March 16, 2021 in Appeal No. 21A-UI-02364-LJ-T that was issued regarding the claimant's separation from employment with this employer.

ISSUE:

Was the claimant able to and available for work effective May 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits effective August 11, 2019. He filed an additional claim effective March 15, 2020.

A decision finding that the claimant had voluntarily quit work without good cause attributable to the employer was issued on December 23, 2020 (reference 01). Claimant filed an appeal and a hearing was held on March 4, 2021 with Administrative Law Judge (ALJ) Johnson. ALJ Johnson issued a decision on March 16, 2021 in Appeal No. 21A-UI-02364-LJ-T finding that the separation from employment was not disqualifying. ALJ Johnson remanded the case to the Benefits Bureau for an investigation of whether the claimant has been able to and available for work.

According to Appeal No. 21A-UI-02364-LJ-T, claimant had been working for Premier Staffing Inc. as a temporary employee placed on assignment at EcoLipse. His job placement with EcoLipse began on January 27, 2020 and ended on March 16, 2020.

When the claimant was working at EcoLipse he was driving to work in a personal vehicle that he had borrowed. Claimant has not had a valid driver's license since 2005 and does not have a valid driver's license to date. Claimant has also been devoting his time to two separate self-employment endeavors. The first self-employment endeavor consists of the claimant making tie-dye T-shirts to sell and the second self-employment endeavor consists of the claimant catering BBQ for various events. Claimant devotes over 40 hours per week on occasion for the catering endeavor and approximately 15 hours per week to the T-shirt endeavor. Claimant has not been actively looking for work as he was never instructed by Iowa Workforce Development that he was required to search for work. His original claim effective August 11, 2019 is listed as a Group Code 8.

Claimant filed his current claim for benefits with an effective date of August 9, 2020. That claim has a Group Code 8 listed. Claimant has not worked and earned insured wages since May 4, 2020 when he worked for 2.95 hours with this employer at EcoLipse. He has not been searching for work and has applied for zero jobs from May 10, 2020 through August 8, 2020.

Claimant's administrative records establish that he filed an application for Federal Pandemic Unemployment Assistance (PUA) benefits on August 4, 2020. No decision regarding whether the claimant is eligible for PUA benefits has been made to date. Claimant's administrative records establish that a note was entered on the KLOG system stating that the PUA application was on hold due to an appeal hearing.

Ms. Karrels testified that the claimant was on a leave of absence from work from March 23, 2020 through May 3, 2020 due to lack of child care issues involving the COVID-19 pandemic. The issue of whether the claimant was able to and available for work from March 15, 2020 (his additional claim date) through May 9, 2020 due to a leave of absence from work and lack of child care will be remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant's application for PUA benefits is approved will be remanded to the Benefits Bureau for an investigation and determination whether claimant is eligible for PUA benefits. The issue of whether the claimant's August 11, 2019 and August 9, 2020 claims are properly coded as Group Code 8 will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective May 10, 2020 through August 8, 2020, when his benefit year expired.

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", subparagraph 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(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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) provides:

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).

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Admin. Code r. 871-24.23(7) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Claimant's sole means of transportation to work from May 10, 2020 through August 8, 2020 (which was the end of his 2019 claim year) was driving a personal vehicle illegally without a driver's license. Further, claimant has been devoting his time and efforts to becoming self-employed with his two separate endeavors (catering and T-shirt sales). As such, the claimant has failed to establish that he has been willing, able and ready to accept suitable work effective May 10, 2020. Regular unemployment insurance benefits are denied effective May 10, 2020 through August 8, 2020 (which is the end of his August 11, 2019 claim year).

DECISION:

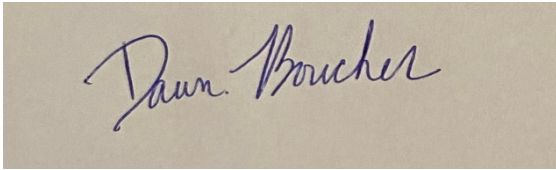
The April 23, 2021 (reference 02) unemployment insurance decision is affirmed. The claimant has failed to establish that he has been able to and available for work effective May 10, 2020 through August 8, 2020. Benefits are denied on that basis from May 10, 2020 through August 8, 2020.

REMAND:

The issue of whether the claimant was able to and available for work from March 15, 2020 (his additional claim date) through May 9, 2020 due to a leave of absence from work and lack of child care is remanded to the Benefits Bureau for an initial investigation and determination.

The issue of whether the claimant's application for PUA benefits is approved is remanded to the Benefits Bureau for an investigation and determination.

The issue of whether the claimant's August 11, 2019 and August 9, 2020 claims are properly coded as Group Code 8 will be remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

July 20, 2021
Decision Dated and Mailed

db/scn