

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID J CANDLER
Claimant

LABOR READY MIDWEST INC
Employer

APPEAL 16A-UI-09660-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/14/16
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 25, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2016. Claimant participated. Employer participated through assistant manager Megan Papesh.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned as a seasonal laborer, full-time, at Dytech from March 14, 2016, and was separated from the assignment on August 5, 2016 when the season ended for him. The season starts around March and sometimes ends around November. After claimant was notified his assignment was over, he contacted the employer. Claimant told the employer he was on temporary layoff. Claimant's pay rate was \$15.00 per hour and the employer does not usually have assignments that pay that amount per hour. Claimant told the employer if there was an assignment that paid around \$15.00 per hour he would take it. Approximately a week after August 5, 2016, the employer told claimant that the assignment had stated he would be off for the remainder of the season. The employer is looking for assignments that meet claimant's qualifications, but has not found any that meet his criteria for pay, but he does meet the work qualifications. Claimant did not choose to opt in to the work alert system, so the employer has not notified him of any assignment openings. Claimant has to opt in to the work alert system.

Claimant has a part-time job. Claimant has not been performing work searches or sending out resumes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work.

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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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. 871-24.22(2)c 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23(20) and (27) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

(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.

Iowa Admin. Code r. 871-24.2(1)(c)(2) and (3) provides that group “1” or “2” claimants are those who no longer meet the definition of group “3” claimants. . Iowa Admin. Code r. 871-24.2(1)(c)(2) and (3) provides:

Group “3” claimants are workers who are employed on a reduced workweek or *temporarily unemployed for a period*, verified by the department, of *four consecutive weeks or less*, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular “employer.”
(emphasis added)

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant's assignment ended on August 5, 2016. Approximately a week later, claimant was informed by the employer that his assignment was over until the next season (March). At the start of this hearing it has been over four weeks since claimant's assignment ended and therefore he is no longer on a temporary layoff, but a permanent layoff. Because of being permanently laid off from work, claimant is obligated to make at least two in-person work searches during each week benefits are claimed and may not restrict him to temporary or intermittent work while waiting to be recalled to work.

Accordingly, benefits are allowed, but claimant is now obligated to make at least two in-person work searches a week.

DECISION:

The August 25, 2016, (reference 02) unemployment insurance decision is modified in favor of the appellant. Benefits are allowed, but claimant is now obligated to make at least two in-person work searches a week.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs