

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**WALTER W WENDLAND**  
Claimant

**GOLDEN GRAIN ENERGY LLC**  
Employer

**APPEAL 15A-UI-08557-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15  
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 24, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2015. Claimant participated. Employer participated through chairman of the board of directors, Dave Sovereign, and was represented by Amanda Jansen, Attorney at Law

**ISSUES:**

Is the claimant able to and available for work, and earnestly and actively seeking work?  
Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as president/CEO since 2002 earning a \$230,000 annual salary, and was separated from employment on May 16, 2014, with salary paid through May 27, 2014. He also worked at Homeland Energy Solutions, Lawler, Iowa, from December 15, 2008, 34 hours per week as president and CEO through November 24 and was paid through December 24, 2014. He is not receiving wages but has as president/CEO/chairman of Ring-Neck Energy since June 2014. He worked “full-time trying to develop” the Ring-Neck Energy project “when not looking for a job.” He also oversees and advises the board of directors. He spends “a lot of time on the phone.” Ring-Neck reimburses his out-of-pocket costs (hotel, meals, mileage). His unemployment insurance benefits were exhausted the week-ending July 4, 2015, and since that time he has increased his weekly hours. Claimant is seeking similar employment and had an interview with Sears for a repair job but there was concern with his age and salary requirement after having earned \$230,000 annually. His minimum salary requirement is listed at \$100,000. He has had no other interviews from 40 or 50 applications and no job offers. Claimant is also “active in guiding the ethanol industry on local, state, and national levels.” He is “also involved in several industry organizations” including Iowa Renewable Fuels Association. (Employer’s Exhibit 1) As part of his duties with Ring-Neck Energy, he “is joined by Chris Schwarck in

spearheading the effort to get the [ethanol] plant built" and conducted a community informational meeting in Onida, central South Dakota, a proposed plant site. Claimant's address of record is in Mason City, Iowa. Related to that proposed plant site he has also attended three zoning meetings, worked on the EPA application. Claimant also owns farm land in three counties in South Dakota. (Employer's Exhibit 2)

Claimant has received his maximum unemployment benefit amount of \$11,232.00 since filing a claim with an effective date of January 4, 2015.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not 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. 871-24.22(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(3), (7), (23), (13), and (25) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(13) If a claimant is visiting in another area and is not in the labor market.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

An individual claiming benefits has the burden of proof to establish he is able to work, available for work, and actively and earnestly seeking work. Claimant argues he spends between 5 and 15 hours working for Ring-Neck Energy each week and his work is not compensated. Availability for work is not measured by receipt or non-receipt of monetary compensation. Given the central South Dakota location of the proposed plant and his attendance at, if not planning for, one informational meeting and three zoning meetings, not including several hours' travel time one-way, claimant's argument of a 15-hour weekly time investment is not credible; certainly not when coupled with his many other self-employment related activities as set out in his testimony and exhibits (board of directors activity, "spearheading" the proposed ethanol plant, farm ground ownership in three South Dakota counties, and activity in industry associations). Thus, claimant, even by his own admission, is spending the majority of each work week in self-employment pursuits. Furthermore, if he is limiting his work searches by his salary requirement, the application and interview for a repair job at Sears is not consistent with that salary requirement or his work history so it is not considered an earnest work search. Accordingly, benefits are withheld.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant has received benefits but was not eligible for those benefits. The benefits must be recovered.

**DECISION:**

The July 24, 2015, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective January 4, 2015. Benefits are denied. The claimant has been overpaid unemployment insurance benefits in the amount of \$11,232.00 and is obligated to repay the agency those benefits.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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