

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER HERRON
Claimant

APPEAL NO. 07A-UI-10135-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION WAREHOUSE CO LTD
Employer

OC: 03/25/07 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Christopher Herron (claimant) appealed an unemployment insurance decision dated October 24, 2007, reference 05, which held that he was not eligible for unemployment insurance benefits because he was not available to work for Action Warehouse Company, Limited (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2007. The claimant participated in the hearing. The employer participated through Barb Hooper, General Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began working for this temporary employment agency on August 29, 2007. The claimant had been advised at the time of hire that he was required to notify the temporary employment agency within three days of the completion of his assignment that he was available for additional assignments. He was most recently working a full-time warehouse position. The claimant's last day of work was October 11, 2007 and he needed to take the next day off to attend two full-time job interviews. When the claimant returned to his assignment on the following Monday, he was told he was no longer needed. He was unhappy with the employer and no longer wanted to work there so did not contact the employer until October 22, 2007 when he wanted his paycheck. Instead of "dealing with the employer", the claimant admittedly lied and told the employer he had been in Georgia the previous week.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the

record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

871 IAC 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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He did not contact the employer at the completion of his assignment or during the week ending October 20, 2007. The claimant said he lied and told the employer he was in Georgia instead of telling them he no longer wanted to work there. Regardless of whether the claimant was out of state or not, he did not make himself available for work and benefits are denied.

DECISION:

The unemployment insurance decision dated October 24, 2007, reference 05, is affirmed. The claimant does not meet the availability requirements of the law and is denied unemployment insurance benefits as of October 20, 2007.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css