

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DOUG D FOX
2609 S FREDERICK
OELWEIN IA 50662

ROBERTS & DYBDAHL INC
PO BOX 1908
DES MOINES IA 50306

Appeal Number: 06A-UI-00816-DT
OC: 12/18/05 R: 04
Claimant: Appellant (4/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Doug D. Fox (claimant) appealed a representative's January 18, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Roberts & Dybdahl, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2006. The claimant participated in the hearing. Brad Seyffer appeared on the employer's behalf. 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on August 16, 2004. He has worked full time as a manufacturing laborer in the truss construction portion of the employer's Waterloo, Iowa business location. His most recent day of work was January 11, 2006. The employer is presently on a seasonal layoff.

The claimant anticipated that there would be an upcoming seasonal layoff, and believing that it might take several weeks to set up a claim for unemployment insurance benefits he contacted his local office the week of December 18, 2005. Through that contact, a claim year was established on his behalf, including a weekly claim for benefits for the week ending December 24, 2005. However, the claimant had not intended to seek benefits for that week, as he was still working his regular hours and wages that week and each week through the week ending January 7, 2006. Beginning January 12, 2006, while the claimant could have worked his regular hours for the employer if work was provided, the employer had no work for him, and anticipated that this could continue until approximately the first of April 2006.

At some date in January 2006 the claimant revisited his local Agency office and sought to reopen his claim due to the layoff going into effect. However, as of the date of the hearing, the Agency record shows that the claimant's claim has not been reopened.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code section 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.

871 IAC 24.23(23) provides:

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

(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.

The claimant was fully employed and not able and available for other work, and therefore not eligible for full or partial unemployment insurance benefits from December 18, 2005 through January 11, 2006. As of January 12, the claimant is able and available for work and qualified for unemployment insurance benefits, if he is otherwise eligible.

An issue as to whether the claimant attempted to reopen his claim after January 11, 2006 arose during the hearing. The case will be remanded for a review and determination as to whether the claimant's claim should be reopened and backdated. 871 IAC 26.14(5).

DECISION:

The representative's January 18, 2006 decision (reference 01) is modified in favor of the claimant. The claimant was not able to work and available for work from December 18, 2005 through the week ending January 7, 2006. As of the week ending January 14, 2006, the claimant is able and available for work and is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for review and determination of the reopening and backdating issues.

ld/pjs