

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM DOTSETH
Claimant

APPEAL NO. 22A-UI-06448-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/26/21
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available, Work Search Requirement

STATEMENT OF THE CASE:

On March 14, 2022, William Dotseth (claimant) filed a timely appeal from the March 11, 2022 (reference 02) decision that reminded the claimant he was required to complete four re-employment activities each claim week, including three job applications, and that warned the claimant he could be disqualified for benefits for future weeks in which the claimant failed to complete the required re-employment activities. After due notice was issued, a hearing was held on April 25, 2022. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-06447-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-C and Re-employment Case Management (RCM) memo updated 4/11/22.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended March 5, 2022.

Whether the claimant was subject to the work search requirement during the week that ended October 5, 2022.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Since 2014, William Dotseth (claimant) has been employed by Bruening Rock Products, Inc. as a full-time driver. The claimant hauls aggregate (rock) for use in highway road construction, gravel road resurfacing, cement plant operations and an assortment of other uses. The highway construction and gravel road resurfacing involve public contracts with county and federal authorities. The work is weather-dependent.

At the end of the road construction season, the employer temporarily lays off the claimant. The employer recalls the claimant in March or April, at the start of the road construction season. The employer temporarily laid off the claimant effective December 17, 2021, at the end of the 2021 road construction season. The employer recalled the claimant to the employment effective

April 25, 2022. During the temporary layoff, the claimant remained able to work and available to perform work for the employer, but the employer had not work for the claimant. The claimant did not seek other employment.

The claimant established an original claim that was effective December 26, 2021. The claimant has thus far made weekly claims for each week between December 26, 2021 and April 16, 2021. Iowa Workforce Development categorized the claimant as a Group 3, job-attached claimant. The claimant has consistently reported on his weekly claim that he is not working, that he is able to work, the he is available for work, but that he has made no job search.

On March 10, 2022, Iowa Workforce Development mailed the reference 01 decision that held the claimant was no longer deemed temporarily unemployed and was required to complete four re-employment activities each claim week, including three job applications. The reference 01 decision has been reversed in Appeal Number 22A-UI-06447-JT-T.

On March 11, 2022, IWD mailed a reference 02 work search warning decision, prompted by the claimant's report of zero employer contacts for the week that ended March 5, 2022 and the March 10, 2022 (reference 01) decision. The week of March 5, 2022 preceded the March 10, 2022 decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

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.

During the week that ended March 5, 2022, the claimant was able to work, available for work, on a short-term layoff from his highway road construction driving job, and not subject to the work search requirement. See Appeal Number 22A-UI-06447-JT-T. The reference 02 work search warning was issued in error and is hereby REVERSED.

DECISION:

The March 11, 2022 (reference 02) decision is REVERSED. During the week that ended March 5, 2022, the claimant was able to work, available for work, on a short-term layoff from his highway road construction driving job, and not subject to the work search requirement. The work search warning decision is REVERSED.



James E. Timberland
Administrative Law Judge

May 2, 2022
Decision Dated and Mailed

jet/scn