

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOBY J CAMPANELLI
Claimant

APPEAL NO. 13A-UI-06321-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUEGGER'S ENTERPRISES INC
Employer

OC: 04/014/13
Claimant: Appellant (4)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Toby Campanelli filed a timely appeal from the May 23, 2013, reference 02, decision that denied benefits effective April 14, 2013, based on an agency conclusion that he was not available for work within the meaning of the law. After due notice was issued, a hearing was held on July 3, 2013. Mr. Campanelli participated. Patrick Holderness represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-06320-JTT. The administrative law judge took official notice of the agency's database readout (DBRO) concerning the claim for benefits as well as the agency's administrative record of the claimant's weekly claim reporting (KCCO).

ISSUE:

Whether Mr. Campanelli has been available for work since he established the claim for benefits that was effective April 14, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Toby Campanelli established a claim for benefits that was effective April 14, 2013. Mr. Campanelli continued the claim through the benefit week that ended June 29, 2013. Mr. Campanelli then discontinued the claim. At the time Mr. Campanelli established his claim, he had just voluntarily quit employment with Bruegger's Enterprises. Mr. Campanelli was employed by Bruegger's as a full-time assistant manager from November 2012 until April 16, 2013, when he voluntarily quit due to a problem with the work hours. At the start of the employment, the employer assigned Mr. Campanelli to work at a store located on Mount Vernon Road in Cedar Rapids. Patrick Holderness was the General Manager at that store and functioned as Mr. Campanelli's trainer and supervisor. Mr. Holderness' immediate supervisor is Andrew Hilliard, District Manager. Mr. Campanelli knew at the time of hire that the employment would be full-time and that the employer expected him to work 50 hours per week. It is the employer's established practice to require all managers, including assistant managers, to work five 10-hour shifts per week.

Mr. Holderness and Mr. Hilliard deviated from the five 10-hours shifts per week practice and protocol during most of Mr. Campanelli's employment. They did this to accommodate

Mr. Campanelli's parenting responsibilities. Mr. Campanelli shares custody of his six year old daughter with the girl's mother. The mother resides in North Liberty. The child attended school in North Liberty. From the start of the employment, the employer allowed Mr. Campanelli to work a combination of 12-hour and eight-hour shifts, so that Mr. Campanelli could get his child to and from school, or to and from the before and after school program, in North Liberty. When Mr. Campanelli worked an eight-hour shift, he would generally work from 7:30 a.m. to 4:30 p.m. When Mr. Campanelli worked a 12-hour shift, he would generally start work at 5:30 or 6:00 a.m. and work until 5:30 or 6:00 p.m. Mr. Campanelli had at times had to call upon his daughter's mother to assist with getting the child to and from school or otherwise caring for the child when Mr. Campanelli was at work. The child's mother had indicated some displeasure in response to such requests.

On March 28, Mr. Holderness and Mr. Hilliard met with Mr. Campanelli to discuss the fact that they did not want to continue to provide the non-standard scheduling option to Mr. Campanelli and wanted instead to bring his work schedule in line with the standard scheduling of management staff, five 10-hour shifts. Mr. Holderness and Mr. Hilliard advised Mr. Campanelli that as of June 1, he would no longer be allowed the non-standard scheduling arrangement. The timing of the change would get Mr. Campanelli through the end of the school year. Under the standard scheduling arrangement, Mr. Campanelli would usually be scheduled to work from 6:00 a.m. to 4:00 p.m. or from 7:00 a.m. to 5:00 p.m. Mr. Campanelli might also be asked to work 10:00 a.m. to 8:00 p.m. or from 5:00 a.m. to 3:00 p.m.

Mr. Campanelli advised Mr. Holderness and Mr. Hilliard at the time of the March 28 meeting, or shortly thereafter, that the change in the scheduling would not work for him and that he would be leaving the employment in two weeks instead. Mr. Campanelli continued to work for the employer until April 16, 2013, at which time his voluntary quit was effective. Mr. Campanelli delivered a written resignation letter to the employer on his last day. Though the employer intended to implement the scheduling change effective June 1 and was anxious to bring Mr. Campanelli's schedule in line with the employer's scheduling practices, the employer was willing to allow Mr. Campanelli to continue to work the same schedule he had been through May 31, 2013.

Mr. Campanelli started his search for new employment as soon as he separated from Bruegger's and as soon as he established his claim for benefits. Mr. Campanelli continued to make at least two employer job contacts until he secured new, full-time employment in Cedar Rapids. Mr. Campanelli started the new full-time employment on Friday, June 14, 2013. The new work hours are 9:00 a.m. to 5:00 p.m. Mr. Campanelli's daughter is enrolled in a summer program through her school in North Liberty. The program hours are 7:00 a.m. to 5:30 p.m.

REASONING AND CONCLUSIONS OF LAW:

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.

The able and available eligibility requirements are independent of the requirement that there be no disqualifying separation from employment. Given Mr. Campanelli's separation from the employment with Bruegger's on April 16, 2013, his availability for work *with that employer* was not a factor in whether he *subsequently* met the work availability requirement. Upon separating from Bruegger's on April 16, 2013, Mr. Campanelli immediately commenced an active and earnest search for new employment. He kept up that search for new, full-time employment until he secured a new full-time position that he started on Friday, June 14, 2013. Mr. Campbell met the work availability requirement from April 14, 2013 through the benefit week that ended June 14, 2013. He would be eligible for benefits for that period, if he met all other eligibility requirements. Effective the benefit week that started June 15, 2013, Mr. Campanelli was again employed full-time, was removed from the labor market, and for that reason no longer met the work availability requirement that applies in the context of unemployment insurance benefits. Benefits would be denied as of June 15, 2013, even if Mr. Campanelli met all other eligibility requirements.

DECISION:

The Agency representative's May 23, 2013, reference 02, decision is modified as follows. The claimant was able and available for work for the period of April 14, 2013 through the benefit week that ended June 1, 2013 and would be eligible for benefits if he met all other eligibility requirements. Effective June 15 2013, the claimant was employed full-time, no longer met the work availability requirement, and was no longer eligible for benefits even if he met the other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs