

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES J RANEK
Claimant

APPEAL NO. 10A-UI-08034-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIGNATURE PROPERTIES OF COUNCIL
Employer

OC: 04/27/08
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 26, 2010, reference 03, that concluded he was unavailable for work effective April 18, 2010. A telephone hearing was held on July 20, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Deb White participated in the hearing on behalf of the employer. With permission from the parties, the record was left open for information regarding the claimant's department-approved training (DAT) status. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant had formal DAT status from June 7, 2008, through May 16, 2009. Linda Fox, Workforce Advisor, provided the claimant's class schedules showing the claimant has been taking classes at Iowa Western Community College continually since May 16, 2009, to the present, and stated that the claimant has had DAT. She also stated that the claimant had never been asked to search for work since he started school. Cindy Wetterlind, with IWD and Iowa Western Community College, stated that the claimant has been provided with tuition assistance through the Workforce Investment Act (WIA). If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant first filed for unemployment insurance benefits with an effective date of April 27, 2008, after his full-time employment with Sinclair Oil Company ended. The claimant received Department-Approved Training (DAT) starting in June 2008 to attend Iowa Western Community College to obtain an associate's degree in nursing to become a registered nurse. He has been continually attending classes since. He had formal DAT status as shown in the Agency records through May 16, 2009, and has been provided with tuition assistance through the Workforce Investment Act (WIA) for this training.

While the claimant was attending school, he accepted a part-time job with the employer as a certified nursing assistant in February 2009. The claimant was originally scheduled to work

24 hours per week. Later, he reduced his scheduled hours to 16 hours per week and finally to just one day per week because the demands of his schooling were too great. The claimant also started working for Maxim Home Health Care in Omaha, Nebraska, in February 2009. The claimant has continued working for both employers while attending school and has reported his wages each week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. Iowa Code § 96.4-6-a-b, however, provides “An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

871 IAC 24.39 provides sets for the requirements for DAT: “The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

The claimant applied for and received approved training and had continued in the same program of training ever since. There is proof that the claimant had been in this training program with the assistance of department representatives all along. Therefore, the claimant is not subject to disqualification under Iowa Code § 96.4-3. The department should recognize the claimant has approved training status. The claimant should contact his local Workforce Development office to have any application for DAT completed to cover any school terms starting April 18, 2010, and afterward.

The employer's account shall not be charged for benefits paid to the claimant, because he is in approved training and the employer has not reduced his hours.

DECISION:

The unemployment insurance decision dated May 26, 2010, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits effective April 18, 2010, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw