

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICK J SEPTER
Claimant

A-TEC RECYCLING INC
Employer

APPEAL 16A-UI-12014-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work and available for work as of October 16, 2016. The parties were properly notified of the hearing. A telephone hearing was held on November 28, 2016. The claimant, Rick J. Septer, participated. The employer, A-Tec Recycling, Inc., participated through Larry Young, president.

ISSUE:

Is the claimant able to work and available for work effective October 16, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time (18-30 hours per week), most recently as a warehouse worker, beginning approximately November 2014.

Young testified that claimant was placed on a one-week disciplinary suspension on October 7, 2016, because he was not available to return to work that day from a prior suspension. Claimant was not specifically notified that this suspension would last one week. Claimant next heard from the employer on October 19, when he received a phone message notifying him to return to work. Claimant returned to work the following day, ninety minutes after his scheduled start time. He worked until 5:00 p.m., as was his standard end time. Young testified that claimant left early and reported late on multiple occasions after he returned from suspension. On November 3, 2016, claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective October 16, 2016, for the one-week period ending October 22, 2016. Claimant is not able to work and available for work effective October 23, 2016, through the end of the week in which he was discharged.

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".

Iowa Admin. Code r. 871-24.23(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.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. On October 17, 18, and 19, claimant was on disciplinary suspension and waiting to be recalled to work. Claimant returned to work on Thursday, October 20. Claimant has shown he was able to work and available for work that week. As of October 23, 2016, claimant had returned to work to such a degree that he was removed from the labor market by virtue of his employment. Regardless of whether he actually reported for each full scheduled shift, claimant had employment and was unavailable for other work, either due to working for A-Tec Recycling or due to circumstances such as illness or car trouble that may have prevented him from reporting to work. Accordingly, benefits are allowed for the one week period of October 16 through October 22. Benefits are denied effective October 23, 2016, through November 5, 2016, which was the end of the week in which claimant was discharged.

DECISION:

The October 27, 2016, (reference 02) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant was able to work and available for work for the one-week period of October 16 through 22, 2016. Benefits are allowed for that one week period, provided he is otherwise eligible. Claimant was not able to work or available for work for the two week period beginning October 23 and ending November 5, 2016.

REMAND:

Both parties agree the claimant was subsequently discharged. The issue of his separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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