

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FRANK C WEIHS
Claimant

APPEAL 18A-UI-11090-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/29/18
Claimant: Appellant (2)**

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 23, 2018, (reference 03) unemployment insurance decision that denied benefits based upon a determination that he was unduly limiting his available work hours. The claimant was properly notified about the hearing. A telephone hearing was held on November 29, 2018. Claimant participated and testified.

ISSUE:

Is the claimant able to work and available for work effective July 29, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for benefits for the week beginning July 29, 2018, when he was separated from his employer of 22 months. When claimant was first hired by this employer he was hired as a full time employee, but his hours were dropped down to approximately 25 per week in January 2018, due to decreased business needs. Claimant subsequently applied for and obtained income-based housing. Claimant understood that if his income increased, so would his rent, but he nevertheless continued to ask his employer for full-time hours. When he separated from employment claimant continued to look for full-time work, though he has only been able to obtain part-time work to date. Despite his rent being income based, claimant continues to search for regular, full-time work. There are no other limitations on claimant's ability to or availability for work.

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 July 29, 2018.

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".

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.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Here, the claimant has been granted income based housing, meaning as his income increases, so will his rent. Claimant has provided credible testimony, however, that he has sought and continues to seek regular full-time employment, despite the fact that an increase in his income will raise his rent. As claimant is able to and available for work effective July 29, 2018, benefits are allowed.

DECISION:

The October 23, 2018, (reference 03) unemployment insurance decision is reversed. The claimant is able to work and available for work effective July 29, 2018. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs