

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT O KING
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL 16A-UI-08038-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the July 12, 2016, (reference 01) unemployment insurance decision that allowed benefits beginning June 12, 2016. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2016. Claimant participated. Employer participated through operations manager Brandyn Veith. Operations manager David Lee registered for the hearing on behalf of the employer, but did not answer when contacted at the number provided.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a security guard. Claimant was hired by the employer on January 2, 2009.

The employer provides security services for other companies (customers). The employer assigns its employees to what customer they are going to provide security for. When an employee's assignment ends, then the employer finds another place to assign the employee.

Omega Morgan Company is a customer of the employer. Omega Morgan Company was a long term temporary job. Claimant was assigned by the employer to the Omega Morgan Company site from May 6, 2015 to June 9, 2016. In June 2016, the Omega Morgan Company ended the services of the employer. Mr. Lee contacted claimant on June 10, 2016 and notified him that the Omega Morgan Company did not need the employer's services anymore. Mr. Lee told claimant he would get a hold of him about a future assignment when one became available. When a customer terminates the employer services, the employer does not discharge the employees that were at the customer's site. On June 20, 2016, Mr. Lee contacted claimant about a position at the Menards site.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work for the period in question.

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. 871-24.22(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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Admin. Code r. 871-24.23(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Effective June 12, 2016, claimant was able and available for work. On June 10, 2016, the employer notified claimant that the customer he was providing security for no longer needed the employer's services. The employer notified claimant that it would contact him when they could assign him to a different job site. Claimant's employment with the employer was not terminated; the employer just did not have any further work for him starting June 10, 2016. Claimant was essentially on a temporary layoff starting June 10, 2016. On June 20, 2016, the employer contacted claimant about a position at the Menards job site. Accordingly, benefits are allowed as of June 12, 2016.

DECISION:

The July 12, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant is able to work and available for work effective June 12, 2016. Benefits are allowed.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs