

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES A KELLEY
Claimant

APPEAL 15A-UI-04722-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPI SECURITY
NEIGHBORHOOD PATROL INC**

**OC: 03/15/15
Claimant: Appellant (5)**

Iowa Code § 96.4(3) - Work Search and 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 a timely appeal from the April 9, 2015, (reference 03) unemployment insurance decision. The decision advised claimant that he was no longer considered temporarily unemployed and must begin to search for work by making no fewer than two job contacts per week. After due notice was issued, a hearing was held on May 28, 2015. The claimant participated. Although properly notified for the hearing, the employer elected not to participate.

ISSUE:

Is claimant required to search for work effective April 9, 2015?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of March 15, 2015. The claimant's group code status is a "2". The claimant has been permanently separated due to a lack of work from his employment and conducted his two weekly searches for employment for weeks he claimed.

The claimant is now self-employed and performing work involving drywall. Since becoming self-employed, the claimant has not been filing for benefits.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.1(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. 871-24.22(2)c 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Iowa Admin. Code r. 871-24.23(7) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

For the weeks the claimant that benefits were claimed, the claimant conducted the required work searches. Because of being permanently laid off from work, the claimant is obligated to make at least two in-person work searches during each week benefits are claimed and may not restrict himself to temporary or intermittent work if he is waiting to be recalled to work.

In addition, the claimant is currently now self-employed and performing drywall work. He therefore does not meet the eligibility requirements for being able and available for employment. If the claimant files future claims for benefits, he will be subject to the two work searches per week requirements.

DECISION:

The April 9, 2015, (reference 03) unemployment insurance decision is modified without a change in effect. The claimant is currently not able and available as he is self-employed. The decision advising claimant that he is no longer considered temporarily laid off and that he must conduct at least two work searches during each week benefits are claimed was appropriate and the claimant will need to make two work searches should his situation change and he begins filing for benefits again.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs