

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EZEKIEL HOWARD
Claimant

BRIDGESTONE AMERICAS TIRE
Employer

APPEAL 16A-UI-08614-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/03/16
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 28, 2016, (reference 01) unemployment insurance decision that allowed benefits as of July 3, 2016. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2016. Claimant did not participate. Employer participated through division human resources manager Jim Funcheon. Employer Exhibit One was admitted into evidence with no objection.

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 production employee. The employer has negotiated with the union to have scheduled vacation shutdowns twice a year. During the vacation shutdowns, employees use vacation time. The employer was on vacation shutdown during regularly scheduled work days June 29 and 30, 2016 and July 1 and 5, 2016. Claimant used vacation and received vacation pay for these days. Employer Exhibit One. Claimant also received holiday pay on July 4, 2016. Employer Exhibit One. After the vacation shutdown ended, claimant returned to work and worked the remaining week (July 6, 7, and 8, 2016). The vacation shut down schedule is posted every year.

On July 18, 2016, claimant gave his two-week resignation notice. The employer accepted claimant's resignation. Claimant separated from employment on July 30, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant was not 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)j(1), (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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. For June 29 and 30, 2016 and July 1 and 5, 2016, claimant was on a bargained for and known vacation shutdown. Claimant was paid vacation pay for these four days and also holiday pay for July 4, 2016. After the vacation shutdown ended, claimant worked the remaining week (July 6, 7, and 8, 2016). Accordingly, benefits are denied for the week ending July 9, 2016.

DECISION:

The July 28, 2016, (reference 01) unemployment insurance decision is reversed. Claimant is not able to work and available for the week ending July 9, 2016. Benefits are denied.

REMAND:

The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs