

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY D EICHER
Claimant

MANPOWER INTERNATIONAL INC
Employer

APPEAL 16A-UI-05798-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/17/16
Claimant: Appellant (4-R)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 18, 2016, (reference 01) unemployment insurance decision that denied benefits as of April 17, 2016. The parties were properly notified about the hearing. A telephone hearing was held on June 9, 2016. Claimant participated. Employer participated through Lori Patterson.

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 by the employer and last assigned at Sodexo from January 8, 2016, and was separated from the assignment on May 22, 2016. Claimant was notified by his Sodexo manager that his assignment would end after May 22, 2016 because the college is only open certain times a year. The last work week that claimant worked for the assignment (ending May 22, 2016), he worked 25.20 hours, for which he was paid; however, according to the administrative record, no wages were reported. After an employee's assignment ends, the employer will try to find the employee a job if requested. Claimant did not request any additional assignments after May 22, 2016. Later, the employer's client, Sodexo, did request claimant to return and he is scheduled to return on June 11, 2016. On June 11, 2016, the employer will reassign claimant back at Sodexo. Claimant worked his normal schedule throughout his employment except for five absences. Claimant did not refuse any hours. After claimant's assignment ended on May 22, 2016, he did not perform any job searches and did not request an additional assignment from the employer.

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 as of the week beginning May 22, 2016.

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)(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(20) and (27) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

(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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. After claimant's assignment ended on May 22, 2016, he failed to make himself able and available for work. Claimant did not contact the employer and request an additional assignment and did not perform any work searches. Accordingly, benefits are denied.

DECISION:

The May 18, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant was not able to work and available for work effective May 22, 2016. Benefits are denied as of May 22, 2016.

REMAND:

The issue regarding reporting of claimant's wages during the period of April 17, 2016 through May 22, 2016 as delineated in the findings of fact is remanded to the Investigation and Recovery Unit for an initial investigation and determination if claimant's wages have been reported correctly.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs