

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY DURST
Claimant

APPEAL 19A-UI-00328-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/25/18
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 11, 2019 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he placed restrictions on his employability. The claimant was properly notified of the hearing. A telephone hearing was held on January 30, 2019. The claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to work and available for work effective December 23, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's current benefit year has an effective date of November 25, 2018 and he reopened his claim effective December 16, 2018. His base period includes the third quarter of 2017 through the second quarter of 2018. Claimant had been employed full-time as head mechanic for Steve Schrader prior to filing his initial claim for benefits. Claimant's normal working hours at his previous employment with Steve Schrader were from 7:00 a.m. to 4:00 p.m., Monday through Friday.

Claimant also works on a family farm and is responsible for planting (one week during the spring season) and harvesting (four weeks during the fall season) each year. While he was employed with Steve Schrader (and during his base period) he took two weeks of vacation and unpaid leave for the remainder of the time he was off of work for planting and harvesting his family farm.

Claimant has not made at least two job contacts when filing his weekly-continued claims for benefits. He received a job offer as a full-time mechanic from Kevin Schrader; however, the rate of pay being offered was less than he was making with Steve Schrader and Kevin Schrader refused to allow him to take five weeks off each year to attend to his family farm. Claimant has made the ability to take unpaid leave from work to attend to his family farm as a non-negotiable issue when looking for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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".

The burden is on the claimant to establish that he is able to and available for work within the meaning of the statute. Iowa Admin. Code r. 871-24.22. Among the reasons that can render an individual no longer able and available are self-imposed and voluntary work restrictions:

Benefit 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.

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.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and **if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment**, then the individual meets the requirement of being available for work.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual **has imposed restrictions which leave the individual no reasonable expectation of securing employment**. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

Iowa Admin. Code r. 871-24.22(2) (emphasis added).

Claimant has restricted his availability for work by requiring that any future employer allow him a leave of absence for at least five weeks (including four consecutive weeks) each year in order to attend to his family farm. This limitation leaves the claimant with no “reasonable expectation of securing employment” pursuant to Iowa Admin. Code r. 871-24.22. As such, benefits are denied effective December 23, 2018.

DECISION:

The January 11, 2019 (reference 03) decision is affirmed. Claimant is not eligible for benefits effective December 23, 2018 and continuing so long as he continues to restrict his availability for work.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs