

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

OLYMPIA N GENUS

Claimant

APPEAL NO. 19A-UI-00860-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHATHAM OAKS INC

Employer

OC: 12/16/18

Claimant: Respondent (4R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2019, reference 04, decision that allowed benefits to the claimant effective December 16, 2018, based on the deputy's conclusion that the claimant was able to work and available for work. After due notice was issued, a hearing was held on February 26, 2019. Claimant Olympia Genus participated. Aaron Pauls represented the employer and presented additional testimony through Lena Kraus. The administrative law judge took official notice of the Agency's administrative record of Ms. Genus' weekly claims (KCCO).

ISSUE:

Whether Ms. Genus has been able to work and available for work within the meaning of the law since her new claim year started on December 16, 2018.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Olympia Genus is a high school graduate and has completed some college coursework. Ms. Genus most recently worked as a part-time cook for Chatham Oaks, Inc. in Iowa City. Ms. Genus has at all relevant times resided in Iowa City. Ms. Genus established a new unemployment insurance claim year that was effective December 16, 2018. Ms. Genus' separation from Chatham Oaks predates the new claim year. At the time Ms. Genus established the new claim year, Iowa Workforce Development provided written notice to Ms. Genus concerning her obligation to make weekly claims, to make a job search during each claim week, and to keep a log of her job search for presentation to a Workforce Development representative upon request.

Ms. Genus has made weekly claims for each week between December 16, 2018 and February 23, 2019. Since Ms. Genus established the new claim year, she has been physically and mentally able to perform work. During each claim week, Ms. Genus has reported making two or more job contacts. However, at the time of the appeal hearing, Ms. Genus did not have a log of her job contacts and was unable to remember job contacts for any weeks other than the two most recent benefit weeks that ended February 16 and 23, 2019. During the week that ended February 16, 2019, Ms. Genus applied for a job at Whirlpool Corporation in Middle

Amana, though she lacked transportation from her home in Iowa City to the Whirlpool plant in Middle Amana. During that same week, Ms. Genus also applied at West Liberty Foods, though she lacked transportation from her home in Iowa City to West Liberty. During that week, Ms. Genus also applied at a Jimmy Johns restaurant in Iowa City, though she lacked transportation to that prospective employment. Based on the lack of transportation, Ms. Genus elected not to follow up on her applications.

Ms. Genus has been without transportation since February 9, 2019, when she was involved in a motor vehicle collision that totaled her vehicle. Ms. Genus was cited in connection with the incident, but is challenging the citation. Ms. Genus lacked insurance on her vehicle beyond liability insurance. Since the collision, Ms. Genus' vehicle has been in an impound lot under the control of the Iowa City Police Department. Ms. Genus asserts that her work search log is in the totaled vehicle. Since the February 9, 2019 collision, Ms. Genus has taken no steps to discern the location of her vehicle or to retrieve the work search log that is purportedly in the vehicle. Ms. Genus cites her lack of transportation as the reason she has not inquired about the location of her vehicle or attempted to retrieve the work search log.

During the benefit week that ended February 23, 2019, Ms. Genus applied for jobs within walking distance of her home. During that week, Ms. Genus applied for work at a Taco Bell restaurant, at a Wendy's restaurant, and at a neighborhood center.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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. 871-24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

The weight of the evidence in the record establishes that Ms. Genus has been able to work since she established the new claim year, but has not been available for work within the meaning of the law since she established the new claim year. Ms. Genus was unable to provide any work search information for the eight weeks between December 16, 2018 and February 9, 2019. If Ms. Genus did indeed have a work search log in her vehicle at the time of the February 9, 2019 collision, she had a reasonable opportunity to retrieve the log during the 17 days between the collision and the unemployment insurance appeal hearing. Ms. Genus testified that she had taken no steps whatsoever to discern the location of her vehicle or to retrieve the job search log. Ms. Genus presented insufficient evidence to meet her burden of proving that she was available for work and was actively and earnestly engaged in a search for new employment during the eight weeks between December 16, 2018 and February 9, 2019. Accordingly, Ms. Genus is not eligible for benefits for those weeks.

Since the benefit week that started February 10, 2019, Ms. Genus has been without transportation from her residence to her area of usual employment, Iowa City. Despite that, two of the three jobs Ms. Genus applied for during the week that ended February 16, 2019 were in distant communities. Given Ms. Genus lack of transportation, neither the Whirlpool application nor the West Liberty Foods application would count toward the work search requirement. That leaves the Jimmy Johns application, but still in the context of Ms. Genus' assertion that she lacks transportation to anywhere in Iowa City. The weight of the evidence establishes that Ms. Genus was not available for work within the meaning of the law and did not engage in an active and earnest search for new employment during the benefit week that ended February 16, 2019. Ms. Genus is not eligible for benefits for the week that ended February 16, 2019.

During the benefit week that ended February 23, 2019, Ms. Genus applied for three jobs within walking distance of her home. Ms. Genus cannot be deemed available for work within the meaning of the law during that week due to her loss of transportation to the area of usual employment, Iowa City. Ms. Genus is not eligible for benefits for the week that ended February 23, 2019.

The availability disqualification effective December 16, 2018 continues at the time of the February 26, 2019 appeal hearing. The availability disqualification shall continue until Ms. Genus resolves her transportation issue and demonstrates an active and earnest search for new employment. Ms. Genus must meet all other eligibility requirements.

DECISION:

The January 25, 2019, reference 04, decision is modified as follows. The claimant has been physically and mentally able to work since she established the new claim year that was effective December 16, 2018. The claimant has not demonstrated an active and earnest search for new employment during the weeks between December 16, 2018 and February 16, 2019. The claimant did not meet that availability requirement during that period. The claimant is not eligible for benefits for that period. The claimant did not meet the availability requirement during the week that ended February 23, 2019 due to her lack of transportation and her restriction of her work search to places within walking distance of her home. The claimant is not eligible for benefits for the week that ended February 23, 2019. The availability disqualification effective December 16, 2018 continues at the time of the February 26, 2019 appeal hearing. The availability disqualification shall continue until the claimant resolves her transportation issue and demonstrates an active and earnest search for new employment. The claimant must meet all other eligibility requirements.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision consistent with the present decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs