

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH R SCHMALZRIED
Claimant

APPEAL NO. 16A-UI-02637-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/25/15
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Joseph Schmalzried filed a timely appeal from the February 22, 2016, reference 02, decision that denied benefits for the week that ended January 16, 2016, based on a weekly claim report in which Mr. Schmalzried responded “No” to the question of whether he was able and available for work. After due notice was issued, a hearing was held on March 25, 2016. Mr. Schmalzried participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 16A-UI-02636-JTT and 16A-UI-02638-JTT. Exhibit A and Department Exhibits D-1, D-3, D-4 and D-5 were received into evidence.

ISSUE:

Whether Mr. Schmalzried was able and available for work during the week that ended January 16, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Schmalzried established an original claim for benefits that was effective October 25, 2015. Mr. Schmalzried reopened the claim effective January 10, 2016 and received benefits for the weeks that ended January 16 and 23, 2016. Mr. Schmalzried started new full-time employment on January 26, 2016. When Mr. Schmalzried made his weekly claim for the week that ended January 16, 2016, he erroneously responded “No” to the question of whether he was able to work and available for work that week. Mr. Schmalzried is a tradesman and belongs to a local trade union. Mr. Schmalzried gets his employment through the trade union. Mr. Schmalzried was registered for work through the trade union during the week that ended January 16, 2016. Mr. Schmalzried was able to work and was available for work assignments during the week that ended January 16, 2016.

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. 871-24.22(1)a and (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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 Administrative Code rule 871-24.22(3)(c) provides as follows:

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit

rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

The evidence in the record establishes that Mr. Schmalzried was registered for work through his local trade union during the week that ended January 16, 2016 and was otherwise in good standing with the union so that he could obtain work. Mr. Schmalzried's weekly claim report contained an erroneous response to the question of whether Mr. Schmalzried was able to work and available for work. Mr. Schmalzried satisfied the able and available requirements during the week that ended January 16, 2016 and was eligible for the benefits he received that week, provided he met all other eligibility requirements.

DECISION:

The February 22, 2016, reference 02, decision is reversed. The claimant was able to work and available for work during the week that ended January 16, 2016 and is eligible for benefits for that week, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs