

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID O THOMPSON
Claimant

APPEAL NO. 11A-UI-07077-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/30/11
Claimant: Appellant (3-R)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

David Thompson filed a timely appeal from the May 3, 2011, reference 01, decision that warned him he was required to make a minimum of two job contacts per week and that found he had failed to meet the work search requirement for the week that ended April 30, 2011. After due notice was issued, a hearing was held on June 15, 2011. Mr. Thompson participated. Exhibit A was received into evidence.

ISSUES:

Whether Mr. Thompson was able and available for work during the week that ended April 30, 2011.

Whether Mr. Thompson met the work search requirement during the week that ended April 30, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Thompson established a claim that was effective January 30, 2011 and received benefits. Mr. Thompson received benefits for the week that ended April 30, 2011. Mr. Thompson's spouse suffered a stroke on April 25 or 26, 2011 and had to be transported to Mayo Clinic in Rochester, Minnesota. Mr. Thompson accompanied his wife to the hospital. For the rest of that week, Mr. Thompson was busy attending to his wife's needs and commuted back and forth to Mayo Clinic from his home in Forest City. During that week, Mr. Thompson made one job contact before his wife's illness made it impossible for him to continue his work search efforts for that week. Mr. Thompson recommenced his work search the next week.

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".

871 IAC 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.

The weight of the evidence establishes that Mr. Thompson did not meet the work availability or the work search requirement for the week that ended April 30, 2011. Accordingly, Mr. Thompson was not eligible for benefits for that week.

This matter will be remanded to the Claims Division for entry of an overpayment decision regarding the benefits disbursed to Mr. Thompson for the week that ended April 30, 2011.

Mr. Thompson is required to meet the minimum work search requirements every week he claims benefits.

DECISION:

The Agency representative's May 3, 2011, reference 01, is modified as follows. For the benefit week that ended April 30, 2011, the claimant was not available for work, did not meet the work search requirement, and was not eligible for benefits. The claimant is required to meet the minimum work search requirements every week he claims benefits.

This matter is remanded to the Claims Division for entry of an overpayment decision regarding the benefits disbursed to claimant for the week that ended April 30, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw