

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP A SHADE**  
Claimant

**ASHER Z LLC**  
Employer

**APPEAL NO: 13A-UI-02952-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/07/12**  
**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available  
Section 96.4-6a,b – Department Approved Training

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 6, 2013, reference 02, that held he was not eligible for benefits effective October 7, 2012, because he limited his availability for work. A telephone hearing was held on April 9, 2013. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having considered stipulation of the evidence in the record finds: Claimant filed an additional claim for UI benefits effective February 10, 2013. The employer in this matter did not protest claimant's benefit entitlement on his October 7, 2012 UI claimant and he received some partial benefits for a four-week period ending November 10, 2012.

The department issued a decision dated February 28, 2013, reference 04, that granted claimant department approved training (DAT) for the period from February 10, 2013 through May 4. The decision states claimant is not required to search for work or work during this period. All claim liable employers are notified that no employer account is charged while claimant is in training. The department also issued a March 7, 2013, reference 03, decision that claimant is allowed benefits by reason of his employment separation from the employer.

The employer failed to respond to the hearing notice.

**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 Code section 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

The administrative law judge concludes claimant is eligible for benefits as a DAT individual for the period from February 10, 2013 through May 4. There is no availability disqualification as claimant is not required to search for work or work during the period of training.

The administrative law judge further concludes backdating the disqualification to October 7, 2012 is erroneous. Claimant is entitled to the partial UI benefits he received during the four-weeks ending November 10, 2012.

**DECISION:**

The department decision dated March 6, 2013, reference 02, is modified in favor of claimant. The claimant is eligible for benefits effective October 7, 2012, and the effective date of his additional claim effective February 10, 2013. No availability disqualification is imposed.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/tll