

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHOL M KONGDOK
Claimant

APPEAL 18A-UI-03563-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/10/17
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 9, 2018, (reference 03) unemployment insurance decision that withheld benefits. Proper notice was issued. A telephone hearing was held on April 12, 2018. Claimant participated and testified.

ISSUES:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a line-worker, until December 10, 2017, when he was temporarily laid off due to lack to work during the slow production season. In early February 2018, claimant received notice, in writing and via telephone, that he was being recalled back to work and should report to work at his normally scheduled time on February 19, 2018. At this point in time, claimant had accepted work with a new employer, Swift Transportation. Claimant had not yet started work with the new employer, as he was first required to complete a three-week course to obtain his CDL. The course began on February 19, 2018, the same day the employer wanted him to return to work. Claimant began his CDL course on February 19, as scheduled. The course was schedule Monday through Friday, beginning at 7:00 a.m. and generally ending each day sometime between 2:00 p.m. and 4:00 p.m. Claimant's working hours with this employer were Monday through Friday, beginning at 7:00 a.m. and ending at 3:30 p.m., making it impossible for him to both work and attend the training required by the new employer before he could start. Claimant notified the employer's human resource department that he would not be returning to work, and why. Claimant was to begin work with the new employer once the course was completed, on March 14, 2018, but his start day was delayed two weeks while he addressed a family matter involving his minor child. Claimant did eventually start work with the new employer on March 28, 2018. Claimant's separation from this employer has not been determined.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not available for work effective the week of February 18, 2018.

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 provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Claimant was attending full-time classes from February 19, 2018 until March 14, 2018. Claimant was unable to work hours consistent with those in his base period during this time and was therefore not available for work. Claimant was then unavailable for work from March 14, through March 27 because he was addressing a family matter. Once that matter was resolved, claimant began work on March 28, 2018. As claimant was unavailable for work beginning the week of February 18, 2018 and was not again available for work until such time as he began a new job on March 28, 2018, he is not eligible for unemployment insurance benefits.

DECISION:

The March 9, 2018, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective February 18, 2018. Benefits are withheld.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs