

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC B DETERT
Claimant

APPEAL NO: 07A-UI-01074-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/08/06 R: 03
Claimant: Appellant (4)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Eric B. Detert (claimant) appealed a representative's January 22, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits for the three-week period ending January 13, 2007 due to a conclusion that he was not able and available for work during that period. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on February 14, 2007. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant established an unemployment insurance benefit year effective October 8, 2006. He did return to some work after that date and has a break in his filing weekly claims after November 25, 2006.

The week of December 24, 2006 the claimant again was unemployed. However, for that week he was out of state and did not seek to file an additional claim or make a weekly claim for that week ending December 30, 2006. He returned to his home in Iowa on December 31, 2006.

On January 5, 2007 he visited his local Agency office and sought to reopen his claim with an additional claim. His claim was reopened with the additional claim which was given an effective date of December 24, 2006. He was told he need not file a weekly claim for that week, as the claim was already taken care of. However, in processing the additional claim the time the claimant was unavailable for work the week of December 24, 2006 was somehow extended to also include the time through January 13, 2007. Therefore, when the claimant attempted to file a weekly claim for the week ending January 13 he could not. He again went into the Agency office on January 19, 2007. An additional reopening of his claim was processed with an effective date of January 14, 2007. He has been able to make weekly claims since that time.

The claimant was able and available for work for the weeks ending January 6 and January 13, 2007, and did satisfy his work search requirements for those weeks.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits by being able and available for employment.

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".

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.

871 IAC 24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant was not able and available for work for the week ending December 30, 2006, but was able and available for work and therefore eligible for unemployment insurance benefits for the weeks ending January 6 and January 13, 2007.

DECISION:

The representative's January 22, 2007 decision (reference 02) is modified in favor of the claimant. The claimant was able to work and available for work effective December 31, 2006. The claimant is qualified to receive unemployment insurance benefits for the weeks ending January 6 and January 13, 2007, if he was otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs