

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM P TILLMAN
Claimant

APPEAL NO. 14A-UI-12777-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/21/14
Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.2(1)(e) & (g) – Retroactive Benefits

STATEMENT OF THE CASE:

Kim Tillman filed a timely appeal from the December 1, 2014, reference 03, decision that denied benefits for the period of October 5, 2014 through November 15, 2014, based on an Agency conclusion that he was not available for work within the meaning of the law during that period. After due notice was issued, a hearing was held on January 9, 2015. Mr. Tillman participated. Exhibits A and B were received into evidence. The administrative law judge left the record open so that the claimant could submit further proof of job contacts, but did not receive anything further from the claimant. The administrative law judge took official notice of the claimant's weekly claims reporting (KCCO) and of the claimant's contact with the agency on November 26, 2014 to request retroactive benefits.

ISSUES:

Whether the claimant was available for work and actively and earnestly seeking new employment during the period of October 5, 2014 through November 15, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kim Tillman established a claim for benefits that was effective September 21, 2014. At the time Mr. Tillman applied online for benefits, he received instructions for making weekly claims for benefits and acknowledged his obligation to make weekly claims as a prerequisite for receiving benefits. Mr. Tillman made a weekly claim for benefits for the weeks ending September 27 and October 4, 2014. Mr. Tillman then ceased making weekly claims. Because Mr. Tillman went for four weeks without making a weekly claim for benefits, he was required to reopen his claim before he could be considered for further benefits. Mr. Tillman reopened his claim for benefits during the week that began November 16, 2014. At that point, Mr. Tillman recommenced making weekly claims.

During the week that ended October 11, Mr. Tillman made two job contacts.

Mr. Tillman traveled out of state by car on October 17, 2014 to look for work as an independent contractor or an employee. Mr. Tillman planned to attend an industry conference on October 25-28, 2014 and planned to stop in Brentwood, Tennessee along the way to network. While traveling, Mr. Tillman's networking and job search plans were temporarily sidelined when he became ill. On or about October 22, Mr. Tillman was evaluated at a medical clinic was diagnosed with walking pneumonia. Mr. Tillman filled a prescription of antibiotics on October 22 in Hoover, Alabama.

While Mr. Tillman was traveling out of state, he eventually attempted to make a weekly claim for benefits, but encountered the message that indicated he needed to reopen his claim. Mr. Tillman decided to defer further action until he returned to Iowa.

On November 26, 2014, Mr. Tillman contacted Workforce Development for assistance in claiming retroactive benefits. At that time, Mr. Tillman told an agency representative that he had been in Florida looking for work from October 4 through November 15, 2014.

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, (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 Admin. Code r. 871-24.23(7), (25) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

(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.

Iowa Administrative Code section 871 IAC 24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

Mr. Tillman is not eligible for benefits for the period of October 5, 2014 through November 15, 2014 because he did not fulfill his obligation to make timely claims for benefits for those weeks. Mr. Tillman has presented sufficient evidence to establish two job contacts during the week that ended October 11, 2014 and the week that ended November 1, 2014. It appears that Mr. Tillman was engaged primarily in a self-employment venture during that period, which would not meet the availability requirement or the job search requirement. Mr. Tillman has otherwise not presented evidence to establish that he was able and available for work or actively and earnestly seeking work during the period in question. During the week that ended October 25, Mr. Tillman was either driving and/or ill.

For the reasons referenced above, Mr. Tillman has not met the availability and/or work search requirements for the period between October 5, 2014 and November 15, 2014 and is not eligible for retroactive benefits for that period.

DECISION:

The December 1, 2014, reference 03, is affirmed. The claimant did not meet the availability and/or work search requirements for the period between October 5, 2014 and November 15, 2014 and is not eligible for retroactive benefits for that period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs