

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW D PERRY**  
Claimant

**APPEAL NO. 13A-UI-13103-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHINE BROS CORP**  
Employer

**OC: 06/02/13**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

Matthew Perry filed a timely appeal from the representative's decision dated November 22, 2013, reference 04, which denied benefits as of October 27, 2013 finding that the claimant is unduly limiting his availability for work. After due notice was provided, a telephone hearing was held on December 16, 2013. The claimant participated. Participating as a representative for the claimant was his father, Douglas Perry. The employer participated by Ms. Ellissa Barrick, Human Resource Representative.

**ISSUE:**

At issue in this matter is whether the evidence in the record establishes that Matthew Perry has been able and available for work while claiming unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Matthew Perry opened an unemployment insurance claim with an effective date of June 2, 2013. Mr. Perry was issued the customary informational instructional brochure which explains the unemployment compensation system and its requirements. Mr. Perry was last employed by Everett Sheldon Company as a full-time janitorial worker until May 20, 2012 when he was separated from that employment.

On or about October 28, 2013, Matthew Perry applied for a job with Shine Bros. Corporation, a firm located in Spencer, Iowa. Shine Bros. Corporation had placed notice that they had a variety of full-time job positions open and were seeking to fill those positions.

On October 29, 2013, Shine Bros. Corporation contacted Matthew Perry to set up an appointment for a job interview. Although Mr. Perry had made application with Shine Bros. Corporation, he stated in the telephone conversation with a Shine Bros. representative on October 29, 2013 that he did not want to work for Shine Bros. or apply for any job positions with that company and declined a job interview.

Matthew Perry initially considered the Shine Bros. Corporation posted job openings for new full-time employment and was aware of Shine Bros. Corporation's location in Spencer, Iowa. After conferring with family members, however, the claimant concluded that the approximate 45-minute travel time and the distance were unacceptable because of the possibility of inclement winter weather. Matthew Perry elected therefore not to apply for full-time employment. The claimant concluded that he was better off to continue to work in a part-time capacity for the Hy Vee Company and for Hardee's and to claim partial unemployment insurance benefits rather than applying for full-time positions at Shine Bros.

Matthew Perry has limited his job seeking activities to an approximate 20-mile radius from his home in Sheldon, Iowa. Although Matthew Perry opened his claim for benefits on June 2, 2013, he has been unable to secure full-time employment at the time of hearing in the geographic area that he has limited his work search to.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant had unduly limited his availability for work. He has.

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.

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and

actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the ableness requirement, 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. 871 IAC 24.22(1).

To satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual must be generally attached to the labor market.

As the length of time that an individual is unemployed increases, the individual is expected expand his or her work seeking activities both in terms of the type of work that he or she would be willing to accept and in terms of geographic area where he or she is willing to work.

In the case at hand the evidence in the record establishes that Matthew Perry is generally limiting his work search to respective employers within an approximate 20-mile radius of his home and has not been willing to expand the geographic area that he is willing to accept work in although he has been unemployed and filed a claim for unemployment insurance benefits effective June 2, 2013. The administrative law judge also concludes based upon the evidence in the record that Matthew Perry is unduly limiting his availability to seek and find full-time employment, because he finds it more beneficial to be employed in part-time jobs and to claim partial unemployment insurance benefits because the part-time employment is not sufficient to meet or exceed his weekly benefit amount.

The administrative law judge concludes that the claimant's self-imposed limitations regarding the geographic area that he is willing to accept work in and the claimant's limitation on accepting full-time work have unduly limited his availability for work within the meaning of the Employment Security Law. Therefore, benefits are denied as of October 27, 2013 and until the claimant's limitations have been removed and the claimant contacts his local Workforce Development Center to establish that he is able and available for work.

**DECISION:**

The representative's decision dated November 22, 2013, reference 04, is affirmed. The claimant's limitations with respect to geographic areas and the type of work that he is willing to accept have unduly limited the claimant's availability for work. Unemployment insurance benefits are denied as of October 27, 2013

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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