

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIGANI M MOHAMOUD ABDULLAH
Claimant

REACH FOR YOUR POTENTIAL INC
Employer

APPEAL 18A-UI-02063-LJ
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/07/18
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 February 9, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not willing to work during the times when his occupation was normally performed. The parties were properly notified of the hearing. An in-person hearing was held in Cedar Rapids, Iowa, on August 2, 2018. The claimant, Tigani Mohamoud Abdullah, participated along with witness Ayman Mohamed. The employer, Reach for Your Potential, Inc., participated through Stuart Kunkel, Human Resources Director. Claimant's Exhibits A and B and Employer's Exhibit 1 were received and admitted into the record. Sudanese Arabic/English interpreter Dia (ID number 16683) from CTS Language Link provided interpretation services for the hearing. The administrative law judge notes that claimant brought numerous other documents with him to the hearing, but they were not relevant and thus were not admitted as evidence. Additionally, claimant raised a concern several times about documents he wanted from the employer. The administrative law judge notes claimant never requested a subpoena for these documents from the Appeals Bureau, despite having ample time to do so.

ISSUE:

Is the claimant able to work and available for work effective January 7, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a direct care provider, beginning on May 23, 2013. Claimant last reported to work on July 8, 2017. After that, he was in jail. He met with the employer in December 2017 to discuss returning to work. Claimant told Kunkel that he was only available to work a three-hour or four-hour shift on Saturdays and was not otherwise available for work. Kunkel explained that the employer staffs in six-hour shifts, so it did not have any work available for claimant at that time. Claimant had worked shifts of a minimum of six hours throughout his employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work.

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(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(16) provides:

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

(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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all,

part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony more credible than claimant's testimony. The administrative law judge believes that claimant met with Kunkel in December 2017 and told him that he could only work a three-hour or four-hour shift.

In order to be eligible for benefits, claimant must establish that he is able to work, available for work, and actively and earnestly seeking work. The administrative law judge finds that claimant was not available for work in December 2017 and January 2018, based on his statements to Kunkel during their conversation. Therefore, benefits are withheld.

DECISION:

The February 9, 2018, (reference 02) unemployment insurance decision is affirmed. Claimant has not established that he was available for work effective January 7, 2018. Benefits are withheld.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs