

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERTO RAMOS
Claimant

APPEAL 16A-UI-11242-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 09/18/16
Claimant: Appellant (2-R)

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 October 12, 2016, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant is still employed at the same hours and wages as contemplated in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2016. The claimant, Roberto Ramos, participated. The employer, Packers Sanitation Services, Inc., registered a telephone number at which to be reached but did not answer when called at the hearing time and did not participate in the hearing. During the hearing, the administrative law judge took official notice of the administrative record and claimant's wage history.

ISSUES:

Did the claimant work for this business entity?

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 with Brock Services, L.L.C. (employer account number 371487), most recently as a painter, from sometime in 2015 until mid-September, 2016, when he was laid off due to a lack of work. Claimant denies that he has ever worked for employer Packers Sanitation Services, Inc. (employer account number 286757). Claimant testified that he is the victim of identity theft, and he believes someone other than himself has earned wages under his social security number. Claimant has spoken with the Social Security Administration and with the Brownsville Police Department about this issue. Claimant's Iowa wage record also shows wages from employers Stellar Management Group (employer account number 323029), Black Hawk Oilfield Services (employer account number 566796), and G & C Poultry, Inc. (employer account number 322812). Claimant denies he has ever worked for any of those employers.

Claimant is currently looking for work in packaging, storage, or warehouse-type work. He does not have any experience specifically in these areas of employment. Claimant is trained as a painter, but he is currently living in Texas and there are no painting jobs available in his area.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant never worked for this business entity. Claimant is currently able to work and 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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant is able to work and available for work. Claimant is actively and earnestly seeking work in multiple fields that do not require specialized training or education. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The October 12, 2016, (reference 03) unemployment insurance decision is reversed. Claimant is currently able to work and available for work. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

Claimant's separation from employer Brock Services, L.L.C. (employer account number 371487) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. Additionally, this matter is remanded to the Benefits Bureau for an initial investigation and calculation of wage credits properly attributable to claimant and a recalculation of claimant's monetary eligibility for benefits and weekly benefit amount.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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