

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL VERDUM
Claimant

FAREWAY STORES INC
Employer

APPEAL 18A-UI-10011-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/18/18
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Fareway Stores, Inc. (employer) filed an appeal from the October 1, 2018, reference 09, unemployment insurance decision that allowed benefits based upon the determination Michael Verdum was able to and available for work effective July 15, 2018. After due notice was issued, a telephone conference hearing was held on October 17, 2018. The claimant did not respond to the hearing notice and did not participate. The employer participated through Director of Human Resources Theresa McLaughlin and Assistant Market Manager Josh Osburn. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's database readout (DBRO), the claimant's continued claims (KCCO), and the fact-finding documents.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective March 18, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on July 31, 2017 as a part-time Market Clerk. He was hired to work between five and 28 hours per week depending on the employer's staffing needs.

The claimant filed his original claim for unemployment insurance benefits effective March 18, 2018. The claimant filed weekly continued claims for the weeks ending March 24 and March 31 and reported he did not earn any wages during those weeks. In his weekly continued claim for the week ending April 7, the claimant reported gross wages earned in the amount of \$176.00. The claimant's claim became inactive and he reopened the claim effective April 22. The claimant filed weekly continued claims each week from the week ending April 28 through the week ending September 15 when he exhausted his claim for benefits. During each claim, he reported that he did not earn any wages.

The employer has provided documentation showing that the claimant worked between 11.2 and 32.1 hours each week from December 30, 2017 through September 15, 2018 and averaged 21.4 hours per week during that time. (Exhibit 1) The week of April 7, the claimant earned \$291.38 in gross wages

from the employer. The claimant did not have any breaks in employment during 2018 and the car accident he had in July 2018 did not prevent him from working. The issue of whether the claimant fraudulently claimed unemployment insurance benefits by failing to report wages earned has not yet been investigated or adjudicated by the Investigation and Recovery Unit of Iowa Workforce Development (IWD).

The claimant separated from the employer on September 15, 2018. The issue of whether the claimant's separation qualifies him for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau of IWD.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective March 18 through September 15, 2018. Benefits are denied.

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".

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit 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(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

An individual claiming unemployment insurance benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was not available for work effective March 18, 2018 as he was still employed in the same wages and hours contemplated at the time of hire. He was not working a reduced workweek and was not totally unemployed at any time between March 18 and September 15, 2018. Accordingly, he is not eligible for unemployment insurance benefits effective March 18 through September 15, 2018.

The issue of whether the claimant's separation on September 15, 2018 from the employer qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination. The issue of whether the claimant fraudulently claimed unemployment insurance benefits by failing to report wages earned is remanded to the Investigation and Recovery Unit of IWD for an initial investigation and determination.

DECISION:

The October 1, 2018, reference 09, unemployment insurance decision is reversed. The claimant is not able to and available for work effective March 18 through September 15, 2018. Benefits are denied.

REMANDS:

The issue of whether the claimant's separation on September 15, 2018 from the employer qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

The issue of whether the claimant fraudulently claimed unemployment insurance benefits by failing to report wages earned as delineated in the findings of fact is remanded to the Investigation and Recovery Unit of IWD for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn