

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CODY R HAGER
Claimant

APPEAL NO. 19A-UI-04213-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVEKA NUTRA PROCESSING
Employer

OC: 04/28/19
Claimant: Appellant (1R)

Iowa Code section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Cody Hager filed a timely appeal from the May 17, 2019, reference 02, decision that denied benefits effective April 28, 2019, based on the deputy's conclusion that Mr. Hager was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 18, 2019. Mr. Hager participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A and B and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since April 28, 2019.

Whether the claimant has been partially unemployed since April 28, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cody Hager established an original claim for benefits that was effective April 28, 2019. Iowa Workforce Development set Mr. Hager's weekly benefit amount at \$467.00. Since Mr. Hager established the claim for benefits, he had made weekly claims. At the time of the appeal hearing, the most recently weekly claim was for the week that ended June 15, 2019. Mr. Hager has consistently reported on the weekly claims that he made two or more job contacts per claim week.

Mr. Hager was most recently employed by Aveka Nutra Processing. Aveka Nutra Processing is the sole base period employer in connection with Mr. Hager's unemployment insurance claim. Mr. Hager began the Aveka employment in 2015. Until April 29, 2019, the employment was full-time. The work involved welding and maintenance work. The work hours were 6:00 a.m. to 2:30 p.m. Monday through Friday and every other weekend. Mr. Hager was also required to work overtime hours as needed. Mr. Hager's wage for the last year has been \$20.00 per hour. Matt Pladsen, Maintenance Supervisor/Foreman, was Mr. Hager's immediate supervisor. On or

about April 15, 2019, Mr. Hager provided the employer with a two-week notice that he would be leaving the employment due to his family circumstances. Mr. Hager's wife's grandfather is a diabetic, had been experiencing declining health and multiple hospitalizations. Mr. Hager desired to be more involved in assisting his wife's grandfather with his housing and daily needs. At the time Mr. Hager gave his two-week notice, the employer continued to have full-time work available for Mr. Hager. To Mr. Hager's knowledge, the employer continues to have full-time work available for him if he is available to perform full-time work.

After Mr. Hager submitted his two-week notice, the employer persuaded Mr. Hager to continue in the employment under a part-time, on-call basis. Mr. Hager acquiesced in that request and transitioned to part-time, on-call status effective April 29, 2019. Once Mr. Hager made the transition to part-time, on-call status, the employer scheduled Mr. Hager to work one day, May 2, 2019. The employer subsequently rescinded that work and has not contacted Mr. Hager to ask him to perform additional work.

Mr. Hager's job search activities and availability for work does not entirely match the information he has provided as part of his weekly claim reports. During the week that ended May 4, 2019, Mr. Hager spoke by telephone with two farming operations. Due to weather conditions, neither farming operation had work for Mr. Hager. Mr. Hager did not engage in any additional job search activities that week.

During the week that ended May 11, 2019, Mr. Hager did not apply for work. During that week, Mr. Hager was preoccupied with making arrangements for his wife's grandfather's transition home.

During the week that ended May 18, 2019, Mr. Hager spoke with two more farming operations, but did not engage in any additional job search activities.

During the week that ended May 25, 2019, Mr. Hager did not engage in a work search because he was again preoccupied with making arrangements for his wife's grandfather.

During the week that ended June 1, 2019, Mr. Hager spoke with two commercial trucking operations about potential work as a commercial truck driver. Mr. Hager lacks a commercial driver's license.

During the week that ended June 8, 2019, Mr. Hager did not engage in any job search activities because he decided instead to spend time at the Minnesota hospital where his wife's grandfather was hospitalized.

During the week that ended June 15, 2019, Mr. Hager did not engage in a job search activities because he was again preoccupied with making arrangements for his wife's grandfather's move.

REASONING AND CONCLUSIONS OF LAW:

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:

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 shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, *if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.* This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence in the record establishes that Mr. Hager has not been available for work within the meaning of the law since he established the original claim that was effective April 28, 2019. Nor has Mr. Hager been partially unemployed within the meaning of the law. Instead, the evidence establishes that Mr. Hager voluntarily ended his availability for full-time work with Aveka effective April 29, 2019 so that he could focus on non-work related matters pertaining to his wife's grandfather. Though Aveka continues to have the same full-time work available for Mr. Hager, Mr. Hager has elected not to make himself available for that full-time work. Mr. Hager's job search activities since April 28, 2019, or lack of job search activities, demonstrate that he has not engaged in an active and earnest search for employment since he established his claim for benefits. During a couple weeks, Mr. Hager did contact a couple farm operations, but engaged in no other work search activities. During another week, Mr. Hager applied spoke to a couple trucking firms about work he knew he was not qualified to perform. During the remainder of the claim weeks, Mr. Hager engaged in no work search at all and elected instead to spend his time on activities related to his wife's grandfather. Benefits are denied effective April 28, 2019. The availability disqualification continued as of the June 18, 2019 appeal hearing.

This matter will be remanded to the Benefits Bureau for adjudication of the separation from employment that appears to have occurred on or about April 29, 2019.

DECISION:

The May 17, 2019, reference 02, decision is affirmed. The claimant has not been available for work or partially unemployed since he established his claim for benefits. Benefits are denied effective April 28, 2019. The availability disqualification continued as of the June 18, 2019 appeal hearing.

This matter is remanded to the Benefits Bureau for adjudication of the separation from employment that appears to have occurred on or about April 29, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs