

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DION L EUBANKS Claimant	68-0157 (9-06) - 3091078 - EI
KELLY SERVICES INC Employer	APPEAL NO. 18A-UI-08204-JTT ADMINISTRATIVE LAW JUDGE DECISION
	OC: 05/06/18 Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Dion Eubanks filed a timely appeal from the July 27, 2018, reference 01, decision that denied benefits effective July 27, 2018, based on the Benefits Bureau deputy's conclusion that Mr. Eubanks was unavailable for work due to a lack of transportation. After due notice was issued, a hearing was held on August 22, 2018. Mr. Eubanks participated. Arcela Arredondo represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-08205-JTT. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO).

ISSUES:

Whether Mr. Eubanks has been able to work and available for work since July 8, 2018.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dion Eubanks established an original claim for benefits that was effective May 6, 2018. Mr. Eubanks made weekly claims each of the weeks between May 6, 2018 and August 18, 2018. Mr. Eubanks received unemployment insurance benefits for the 11 weeks between May 6, 2018 and July 21, 2018. At the time Mr. Eubanks established his claim for benefits, he had most recently been employed by Kelly Services, Inc., a temporary employment agency. The most recent assignment had been at Kraft Foods in Davenport. During that employment, Mr. Eubanks resided in Rock Island, Illinois. On June 1, 2018, Mr. Eubanks moved to Blue Island, Illinois, a suburb of Chicago. On June 23, 2018, Mr. Eubanks performed work for Kelly Services in a one-day assignment in Romeoville, Illinois, an outer suburb of Chicago.

On June 27, 2018, Kelly Services Recruiter Mario Luviano offered Mr. Eubanks a full-time, temporary work assignment in Aurora, Illinois. The offer was contingent upon Mr. Eubanks successfully completing a screening and background check process. The assignment offered day-shift hours and paid \$13.50 per hour. Mr. Eubanks' work at Kraft had offered day-shift hours and paid \$17.55 per hour. After hearing the particulars of the assignment, Mr. Eubanks told Mr. Luviano that he would accept the assignment. Mr. Eubanks then participated in the screening and background check process. Mr. Eubanks successfully completed screening process by July 6, 2018. Mr. Luviano then attempted to reach Mr. Eubanks by telephone. Mr. Luviano was eventually able to speak with Mr. Eubanks on Friday, July 13, 2018. At that time, Mr. Eubanks told Mr. Luviano that he was unable to report for work due to a lack of

transportation and that he would call when he had his transportation issues sorted out. The commute from Blue Island to Aurora was about an hour. Mr. Eubanks was able to resolve his transportation the following day, but did not immediately get back in touch with Mr. Luviano because he had decided that the Aurora assignment did not pay enough to justify driving an hour to and from the assignment. During the week that ended July 14, 2018 and during each subsequent week of his claim, Mr. Eubanks had made two employer contacts. Mr. Eubanks has been willing to travel substantial distance in search of work. Mr. Eubanks relies upon a friend for transportation. It was that friend's vehicle that was at issue on July 13, 2018. The friend is not employed and is willing to transport Mr. Eubanks to and from work.

After July 13, 2018, Kelly Services next had contact with Mr. Eubanks on August 2, 2018, when Mr. Eubanks called to ask whether the company had any machine operator work that would pay \$17.00 per hour. The employer did not have such positions available at that time. At the time of the contact, Mr. Eubanks had resolved his transportation issues.

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.

Iowa Admin. Code r. 871-24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The weight of the evidence in the record establishes that Mr. Eubanks had good cause to refuse to the Aurora assignment on July 13, 2018, based on his lack of transportation. The weight of the evidence establishes that Mr. Eubanks was unavailable to discuss the proposed assignment with Kelly Services during most of the week that ended July 14, 2018. In light of the transportation issue and being unavailable for the work referral, Mr. Eubanks did not meet the availability requirement during the week that ended July 14, 2018 and is not eligible for benefits for that week. The weight of the evidence establishes that Mr. Eubanks has had transportation and has been engaged in an active and earnest search for work since the week that began July 15, 2018. Benefits are allowed effective July 15, 2018, provided Mr. Eubanks is otherwise eligible.

DECISION:

The July 27, 2018, reference 01, decision is modified as follows. The claimant did not meet the work availability requirement during the week that ended July 14, 2018 and is not eligible for benefits for that week. The claimant has been able to work, available for work, and engaged in an active and earnest search for new employment since the week that began July 15, 2018. Benefits are allowed effective July 15, 2018, provided the claimant is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs