

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ROSE A AMES

Claimant,

and

GOOD SAMARITAN SOCIETY INC

Employer.

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HEARING NUMBER: 15B-UI-00949

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held February 17, 2015. The administrative law judge's decision was issued February 24, 2015. The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing is inadequate on the issue of the Claimant's ability and availability to work, if any, for employers other than Good Samaritan. Further, we remand the matter to determine the question of disqualification based on possible misconduct.

REASONING AND CONCLUSIONS OF LAW:

Remand On Able & Available:

Iowa Code section 96.4(3) (2015) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

871 IAC 24.22 expounds on this:

871—24.22 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.

24.22(1) Able to work. An individual must be physically and mentally able to work in **some gainful employment, not necessarily in the individual's customary occupation**, but which is engaged in by others as a means of livelihood.

....

24.22(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.**

We note that the regulations specifically address work-release:

24.22(2)g. Work release program while incarcerated. For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3); but the department will review any situation concerning an individual incarcerated in a jail, who can meet the able to work, availability for work, and actively seeking work requirements of Iowa Code section 96.4(3).

871 IAC 24.22(2)(g).

Now this Claimant is not on work-release, rather she is awaiting trial. But even in the setting of a more restrictive work-release, it is possible to be able and available based on individual circumstances. Certainly this Claimant was not made unavailable by incarceration because by the time she **first** filed for benefits she was already no longer incarcerated. In general it is not required that the Claimant be released to work in her previous employment. All that is required is that the Claimant be able to work in “some gainful employment, not necessarily in the individual’s customary occupation, but which is engaged in by others as a means of livelihood”. 871 IAC 24.22(1). She must be “genuinely attached to the labor market.” 871 IAC 24.22(2). Here the Administrative Law Judge asked whether the Claimant was able to “work” but given the discussion of her enforced leave from Good Samaritan the question was not clear whether the Claimant was able to work in other employment in the labor market or whether she was only unable to work for Good Samaritan. Even assuming she cannot work as a CAN, all this establishes is a failure to be able to work in her customary occupation. The issue that must be addressed clearly is whether the Claimant remains available to work other jobs in the labor market for which she is qualified while on pre-trial release.

Remand On Separation: “Iowa Code section 17A.12 provides all parties to a contested case shall be afforded an opportunity for hearing after reasonable notice in writing. The notice shall include a reference to the particular sections of statutes and rules implicated and a short and plain statement of the matters asserted. Iowa Code §17A.12(2)(c) and (d).” *Silva v. Employment Appeal Board*, 547 N.W.2d 232, 235 (Iowa 1996). The plain language of §17A.12(2)(c) and (d) allows the hearing to proceed only on those issues, and concerning those Code sections, that are identified in the Notice of Hearing. Here there is no question that the Notice only encompassed able and available, and failure to report, under Iowa Code §96.4(3), and not any issues about a separation from employment. The issue of disqualification based on a separation and the issue of “able and available are governed by different code sections. *Compare* Iowa Code §96.4(3) (“able and available”) with Iowa Code §96.5(1)-(2) (disqualification based on quit and discharge). Thus the Notice of hearing failed to include citation to the Code section governing disqualification based on the nature of the separation. This, of course, prevents us from addressing the issue

of whether the Claimant was disqualified based on the nature of the separation. Iowa Code §17A.12; *Silva v. Employment Appeal Board*, 547 N.W.2d 232, 235 (Iowa 1996).

We understand that the Claimant was placed on a leave of absence. It seems clear that the leave was in reaction to the arrest. We think the case can thus be analyzed under rule 24.32(9) dealing with disciplinary leaves of absence. Thus we remand on this issue as well.

DECISION:

The decision of the administrative law judge dated February 24, 2015, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall conduct a hearing following due notice in order to address the issue of able and available consistent with today's decision, and in order to address the issue of whether the Claimant is disqualified based the nature of his separation from the Employer. After the hearing, the administrative law judge shall issue a decision, which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv