

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT MCGREGOR
Claimant

APPEAL 16A-UCFE-00010-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

VA CENTRAL IA HEALTH-05
Employer

OC: 01/24/16
Claimant: Appellant (2)

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/appellant filed an appeal from the February 18, 2016 (reference 02) unemployment insurance decision that denied benefits based upon him not being able to perform work at this time due to illness. The parties were properly notified of the hearing. An in-person hearing was held on March 30, 2016. The claimant, Robert McGregor, participated personally. The employer, VA Central IA Health-05, did not participate. Claimant's Exhibits A and B were admitted.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending January 24, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as nutrition and food service worker. He was employed from June 29, 2014 until November 11, 2015; when he was discharged for absenteeism.

Claimant had his vehicle and cell phone stolen in October 2015 and went through some personal struggles including being homeless for a time period. Claimant currently lives at the domiciliary at the VA Hospital. He is not restricted from leaving the premises and may do so on his own accord. He was not hospitalized with an illness which would make him unable to or unavailable for work. He is physically able and willing to work without any restrictions (See Exhibit A). He is actively seeking employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work for the period in question. Benefits are allowed.

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. Claimant is able to work, available for work, and actively and earnestly seeking work. Accordingly, benefits are allowed.

DECISION:

The February 18, 2016 (reference 02) unemployment insurance decision denying benefits is reversed. The claimant is able to work and available for work effective January 24, 2016. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

db/can