

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENT A BERGER
Claimant

DEE ZEE INC
Employer

APPEAL 17A-UI-07927-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/17
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 2, 2017, (reference 02) unemployment insurance decision that denied benefits from July 9, 2017 through July 15, 2017. The parties were properly notified about the hearing. A telephone hearing was held on August 22, 2017. Claimant participated. Employer participated through human resources specialist Lacey Little. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the claimant able to work and available for work from July 9, 2017 through July 15, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's normal work week is forty hours per week, Monday through Friday. From July 9, 2017 through July 15, 2017, claimant worked his normal work week, including paid time off (PTO), for around 41 hours for the week. Claimant also worked on Saturday, July 15, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant was not able to work and available for work for the period in question.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. From July 9, 2017 through July 15, 2017, claimant worked, including PTO, over forty hours. During this time period, "claimant's availability for other work [was] unduly limited because [he worked] to such a degree that remove[d him] from the labor market." Iowa Admin. Code r. 871-24.23(23). Accordingly, benefits are denied from July 9, 2017 through July 15, 2017.

DECISION:

The August 2, 2017, (reference 02) unemployment insurance decision is affirmed. Claimant is not able to work and available for work from July 9, 2017 through July 15, 2017. Benefits are denied from July 9, 2017 through July 15, 2017.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs