

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHARLES H GORDON
3803 SE 8TH
DES MOINES IA 50315

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-04181-DT
OC: 03/14/04 R: 02
Claimant: Appellant (3)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Charles H. Gordon (claimant) appealed a representative's April 5, 2004 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits because of not being able and available for work. After hearing notices were mailed to the claimant's last-known address of record, a telephone hearing was held on May 6, 2004. The claimant participated in the hearing. This appeal was consolidated for hearing with two related Appeal Numbers 04A-UI-04179-DT and 04A-UI-04180-DT. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant is confined in an involuntary court-ordered residential treatment program, beginning February 27, 2004, with a potential release date of August 27, 2004. He is not free to leave the program and pursue employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

871 IAC 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.

The claimant is not able and available for work at least through August 27, 2004.

DECISION:

The representative's April 5, 2004 decision (reference 03) is modified to extend the period of disqualification. The claimant is not able to work and available for work effective February 27, 2004. The claimant is not qualified to receive unemployment insurance benefits so long as he remains unavailable for work; if he subsequently becomes available, benefits would allowed, if the claimant is then otherwise eligible.

ld/kjf