

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANTHONY J SMITH
Claimant

APPEAL NO. 07A-UI-08956-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/25/07 R: 01
Claimant: Appellant (1)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Anthony Smith filed a timely appeal from the September 4, 2007, reference 02, decision that denied benefits for the period of June 17, 2007 through July 21, 2007 and that concluded Mr. Smith was not available for work during that period. After due notice was issued, a hearing was held on October 3, 2007. Mr. Smith participated. Exhibit A and Department Exhibit D-1 were received into evidence. The hearing record was left open so that the administrative law judge could receive documentary evidence relating to an alleged theft of benefit checks. The administrative law judge received a copy of the appropriate documents from the Council Bluffs Workforce Development Center and received them into the record as Department Exhibit D-2. The hearing in this matter was consolidated with the hearing in appeal number 07A-UI-08957-JTT.

ISSUE:

Whether the claimant was able to work and available for work during the period of June 17, 2007 through July 21, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Anthony Smith established an additional claim for benefits that was effective April 22, 2007, and received benefits. The additional claim was prompted by a “temporary layoff” from Goodkind & Goodkind Direct, Inc., in Carter Lake. The “temporary layoff” was effective April 20, 2007. Mr. Smith was never recalled to Goodkind & Goodkind. On June 18, 2007, Mr. Smith was arrested and incarcerated in Omaha. On June 19, Mr. Smith was transported to Lincoln in Lancaster County, Nebraska, where he continued in jail until his release on July 21, 2007. Prior to his arrest, Mr. Smith resided in Omaha. After Mr. Smith’s release from jail, he returned to Omaha. After the first 15 days of incarceration in Lancaster, Mr. Smith was eligible to participate in a work release program.

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".

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.

If a claimant is in jail or prison, such claimant is not available for work. 871 IAC 24.23(12).

A claimant is disqualified for being unavailable for work if the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market. 871 IAC 24.23(25).

The evidence indicates that Mr. Smith was incarcerated from June 18, 2007 until July 21, 2007. The evidence indicates that Mr. Smith's community of residence was Omaha, but that he was incarcerated in Lincoln. The greater weight of the evidence indicates that Mr. Smith was not in the labor market during the period of June 18, 2007 to July 21, 2007. The administrative law judge concludes that the Mr. Smith did not meet the availability requirements of Iowa Code section 96.4(3) during the period of June 17, 2007 through July 21, 2007. Accordingly, Mr. Smith was ineligible for benefits for that period.

DECISION:

The Agency representative's September 4, 2007, reference 02 decision is affirmed. The claimant was not available for work during the period of June 17, 2007 to July 21, 2007. Accordingly, the claimant was not eligible for benefits during that period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs