

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LARRY R HOSKINS
Claimant

APPEAL NO. 18A-UI-12249-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRADESMEN INTERNATIONAL LLC
Employer

OC: 11/04/18
Claimant: Appellant (5R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Larry Hoskins filed a timely appeal from the December 14, 2018, reference 02, decision that held he was ineligible for benefits effective November 4, 2018, based on a conclusion that he was not able to work and not available for work within the meaning of the law. After due notice was issued, a hearing was held on January 10, 2019. Mr. Hoskins participated. Cody Pech represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 18A-UI-12248-JTT and 18A-UI-12250-JTT. Exhibit A and Department Exhibits D-2, D-3 and D-4 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO) and of the claimant's weekly claims (KCCO).

ISSUE:

Whether Mr. Hoskins has been able to work and available for work within the meaning of the law since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Larry Hoskins established an original claim for benefits that was effective November 4, 2018. Mr. Hoskins made weekly claims for the six consecutive weeks between November 4, 2018 and December 15, 2018. Mr. Hoskins then discontinued making weekly claims because he had received unemployment insurance decisions that disqualified him for benefits. Those decisions each contained the following warning:

Notice to Claimant: Continue Filing Weekly Claims

You should continue to file weekly claims for unemployment insurance benefits while an appeal is pending. You will only receive benefits for the weeks in which you filed a valid claim.

Mr. Hoskins filed an appeal from the disqualification decisions on December 21, 2018.

When Mr. Hoskins established his claim for benefits in November 2018, he indicated that he was attached to an employer. Based on that information from Mr. Hoskins, Iowa Workforce Development categorized Mr. Hoskins as a Group 3 employee, one who is attached to an employer and therefore is not required to make weekly job searches. The employer in question is Tradesmen International, L.L.C. Mr. Hoskins is a carpenter by trade. Mr. Hoskins had voluntarily quit the full-time Tradesmen employment in August 2018 and was not in fact attached to that employer at the time he established the November 4, 2018 original claim for benefits. See the December 14, 2018, reference 01, decision and Appeal Number 18A-UI-12248-JTT. Even though Mr. Hoskins had been voluntarily separated from Tradesmen for about three months at the time he established his claim for unemployment insurance benefits, he elected not to look for other work and elected instead to ponder a return to Tradesman at some unspecified future date.

Shortly before Mr. Hoskins separated from Tradesmen in August 2018, Mr. Hoskins suffered a chemical burn to his leg in the course of performing his work duties. The chemical burn did not prevent Mr. Hoskins from continuing in the employment and was not the basis for Mr. Hoskins' separation from that employment. The separation had instead been based on Mr. Hoskins need to care for his ill mother and his subsequent lack of transportation. Mr. Hoskins was done caring for his mother and had resolved the transportation issue well before he established his claim for benefits. See Appeal Number 18A-UI-12248-JTT.

On December 13, 2018, Mr. Hoskins participated in a fact-finding interview. At that time, Mr. Hoskins asserted that he was still dealing with issues related to his knee, that he did not want to work out of concern for his knee, that he would not be returning to work until he saw a doctor, and that he did not know when he would be seeing a doctor in light of his lack of insurance.

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".

Iowa Admin. Code r. 871-24.22(1)a 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.

(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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

Iowa Admin. Code r. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the

workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The weight of the evidence establishes that Mr. Hoskins has not been available for work within the meaning of the law since he established the original claim for benefits that was effective November 4, 2018. Mr. Hoskins has not been attached to an employment since he filed his claim. Mr. Hoskins should have been making an active and earnest search for new employment each week of his claim, but has elected not to do that. The weight of the evidence establishes that there is no medical condition that has prevented Mr. Hoskins from being able to perform work since he filed his claim for benefits. In light of Mr. Hoskins voluntary separation from employment with Tradesmen International months before he established his claim for unemployment insurance benefits, there would be no reasonable basis for Mr. Hoskins to forego a work search and to instead save himself for employment with Tradesman. For all these reasons, benefits are denied effective November 4, 2018. The able and available disqualification continued through December 15, 2018, the last week for which Mr. Hoskins filed a weekly claim. The disqualification continued from that point to the present, based on these same reasons and based on Mr. Hoskins' failure to file weekly claims for the period subsequent to December 15, 2018.

DECISION:

The December 14, 2018, reference 02, decision is modified as follows. The claimant has not been available for work within the meaning of the law since he established his original claim for benefits. Benefits are denied effective November 4, 2018. The availability disqualification continues to the present.

This matter is remanded to the Benefits Bureau for reclassification of the claimant as a group 2 or group 6 claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs