

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J WEILAND
Claimant

APPEAL NO. 15A-UI-03106-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 09/28/14
Claimant: Appellant (1)

Section 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 2, 2015 (reference 03) which denied unemployment insurance benefits as of February 15, 2015; finding that the claimant unduly limited his availability for work by not being willing to work during the times when work in his occupation was available. After due notice was provided, a telephone hearing was held on April 8, 2015. Claimant participated. The employer participated by Ms. Colleen McGinty, UI Administrator, and Ms. Julie Thill, Account Manager/Scheduler.

ISSUE:

At issue is whether the claimant was able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Michael Weiland began employment with L A Leasing on February 10, 2014. Mr. Weiland was assigned to various client employers. One of the employers that Mr. Weiland had accepted assignments with was at the Nordstrom's distribution center. Mr. Weiland usually worked as a general laborer and was paid by the hour.

The work assignments at the Nordstrom's distribution center are usually conducted on a day by day basis. During the week of February 15, 2015, Mr. Weiland was contacted by L A Leasing each day for an assignment as a general laborer at the Nordstrom's distribution center. During that week, Mr. Weiland did not accept assignments offered to him by L A Leasing for the majority of that week. The claimant responded "no" to his availability to accept assignments on February 18, 19, and 20 that week.

Mr. Weiland did not accept assignments that were available and offered to him during the majority of the work week of the week of February 15, 2015 because he had personal obligations to attend to. The claimant was engaged in doctor and dentist visits for himself and a doctor's visit for his mother. Mr. Weiland was available for all of the assignments offered to him by L A Leasing the following week.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was able and available for work during the majority of the work week of February 15, 2015. He was not.

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. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that he meets the above requirements. 871 IAC 24.22.

To satisfy the ableness requirement, an individual must be physically and mentally able to work in some gainful employment; not necessarily the individual's customary occupation but which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). To satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse but must be generally attached to the labor market. An individual may place some limitations on the type of work that he or she is willing to accept, providing that the limitations do not unduly limit the claimant's availability to accept work. If an individual has personal obligations that prevent the individual from working a major portion of a work week, those obligations unduly limit the claimant's availability for work and the individual is not available for unemployment insurance benefits that week.

In the case at hand, the evidence establishes that although work was available to him through L A Leasing for the week of February 15, 2015, Mr. Weiland was not available for work for the majority of that week because he had other personal obligations in the form of doctor's appointments for himself and his mother. Because Mr. Weiland was not available for work within the meaning of the Employment Security Law for the majority of the work week of February 15, 2015, Mr. Weiland is ineligible to receive unemployment insurance benefits for that week.

DECISION:

The representative's decision dated March 2, 2015 (reference 03) is affirmed. The claimant unduly limited his availability for work as of February 15, 2015 and is ineligible to receive unemployment insurance benefits for that week.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

can/can