

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A KYLE
Claimant

APPEAL NO. 12A-UI-01880-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L & L DISTRIBUTING CO INC
Employer

OC: 01/08/11
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 February 22, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 12, 2012. Claimant participated with his mother Joanne Kyle. Employer participated through general manager Greg Nashleanas. IWD claims division has already been notified of the separation (see, reference 04).

ISSUE:

Was claimant able to and available for work effective January 8, 2012?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a warehouse worker from March 2011 and was separated from employment sometime during mid-February 2012. He was not guaranteed a minimum number of hours. The warehouse manager schedules for the next week depending on work load and holidays. All part-time employees are required to work every other or every third weekend to drive a truck and fill beer coolers in the Sioux City area. After claimant was charged with OWI in October 2011 he pleaded to reckless driving in January 2012. The employer was uncertain about his driver's license status so he could not drive and he required time off from work for appointments with his lawyer, hearings, and trial. Often the employer was notified of the intended absence at the last minute or he would not call or report for work. His driver's license issue was resolved a week before the UI hearing on March 12, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

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.

871 IAC 24.23(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Since claimant's OWI charge and related driver's license and criminal issues limited his availability for work, the reduction in hours was related to his own conduct and not due to a reduction of available work. Accordingly, benefits are denied.

DECISION:

The February 22, 2012 (reference 02) decision is affirmed. The claimant is not able to work and available for work effective January 8, 2012. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs