

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L HUBBARD
Claimant

APPEAL NO. 09A-UI-17831-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION STAFFING SERVICES INC
Employer

OC: 10/11/09
Claimant: Respondent (2-R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 18, 2009, reference 01, decision that allowed benefits effective. After due notice was issued, a hearing was held on January 7, 2010. Claimant Matthew Hubbard did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Marjean Short, Administrative Assistant/Office Manager represented the employer. Exhibit One was received into evidence.

Mr. Hubbard contacted the administrative law judge 29 minutes after the scheduled start of the hearing. This was after the hearing record had closed and after the employer had been excused. Mr. Hubbard indicated at that time that he had discarded the hearing notice and had not followed the hearing notice instructions to provide a telephone number for the hearing. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record. See 871 IAC 24.14(7)(c). Mr. Hubbard failed to provide good cause to reopen the record.

ISSUE:

Whether the claimant was able to work and available for work effective October 11, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Matthew Hubbard performed work for the employer in one assignment. The assignment was a temporary employment work assignment at Firestone. The assignment started in March 2009 and Mr. Hubbard completed the assignment on May 29, 2009. On June 1, 2009, Mr. Hubbard contacted the employer to indicate he was available for a new work assignment. The contact complied with the employer's expectation that Mr. Hubbard would contact the employer within three days working days of the end of an assignment. The employer did not have further work for Mr. Hubbard at that time.

Mr. Hubbard established a claim for benefits that was effective October 11, 2009.

The next contact—or attempt at contact—between the parties occurred on October 12, 2009. On that day Barb Hooper, called the telephone number the employer had for Mr. Hubbard and left a message regarding an assignment at Firestone. The employer's witness does not know the specific content of the message. The employer received no response from Mr. Hubbard. On October 29, 2009, the employer again called the number the employer had for Mr. Hubbard and left a message regarding an assignment at Firestone. The employer's witness does not know the specific content of the message. The employer received no response from Mr. Hubbard.

On November 17, 2009, the employer participated in a fact-finding interview to address whether Mr. Hubbard was able and available for work during the period in question. Mr. Hubbard did not participate in the fact-finding interview.

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.

The claimant had the burden to establish by a preponderance of the evidence that he has been both able to work and available for work during each week he claims unemployment insurance benefits. The claimant failed to present evidence at the hearing to establish that he has been able to work and available for work. The claimant also failed to appear for the November 17,

2009 fact-finding interview, the purpose of which was to discuss his work availability. The weight of the evidence indicates that Mr. Hubbard was unresponsive to the employer's calls on October 12 and 29. Mr. Hubbard has failed to meet his burden of proving his availability for work. Accordingly, benefits are denied for the period of October 11, 2009 through October 31, 2009.

This matter will be remanded to the Claims Division for determination of the claimant's work ability and availability beginning November 1, 2009. The remand should *not* revisit the claimant's work ability and availability during the period of October 11, 2009 through the week ending October 31, 2009, since that period has been addressed in the present decision and the claimant has appeal rights in connection with the present decision.

This matter will also be remanded to the Claims Division for entry of an appropriate overpayment decision concerning benefits disbursed for the period of October 11, 2009 through the week that ending October 31, 2009.

DECISION:

The Agency representative's November 18, 2009, reference 01 is reversed. The claimant failed to demonstrate that he was available for work during the period of October 11-31, 2009. Benefits are denied for that period.

This matter will be remanded to the Claims Division for determination of the claimant's work ability and availability beginning November 1, 2009. The remand should *not* revisit the claimant's work ability and availability during the period of October 11, 2009 through the week ending October 31, 2009, since that period has been addressed in the present decision and the claimant has appeal rights in connection with the present decision.

This matter will also be remanded to the Claims Division for entry of an appropriate overpayment decision concerning benefits disbursed for the period of October 11, 2009 through the week that ending October 31, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs