

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS C BERNHART
Claimant

APPEAL NO. 08A-UI-03562-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS
Employer

OC: 12/23/07 R: 04
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 3, 2008, reference 03, decision that denied benefits effective March 13, 2008. After due notice was issued, a telephone conference hearing was held on April 24, 2008. Claimant participated. Employer participated through Debbie Chamberlin.

ISSUE:

The issue is whether claimant is able to and available for work effective March 13, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed in a temporary assignment at Wineguard until March 18, 2008 when he called to say he could not work the assignment because he was having issues with his medication. Employer asked him to fax a medical release and claimant believes he did but did not verify receipt or follow up about additional assignments. He had been in the Burlington Hospital and was released to return to work on March 5, 2008 without restrictions. He did not return to work, provide a medical excuse or release and did not check back with Manpower to see if they had work. Continued work was available.

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(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.

Since claimant did not verify receipt of the faxed medical release or check in with employer about additional work assignments, he was not able to work and did not make himself available for work. Accordingly, benefits are denied.

DECISION:

The April 3, 2008, reference 03, decision is affirmed. The claimant is not able to work and available for work effective March 13, 2008. Benefits are denied. Claimant must report back to

Manpower with medical releases to work and offer his services for placement in additional work assignments.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css