

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHEREE A WENMAN
Claimant

S & S EMPLOYMENT PARTNERS LLC
Employer

APPEAL 18A-UI-09693-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/13/18
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

S & S Employment Partners, LLC (employer) filed an appeal from the September 12, 2018, reference 03, unemployment insurance decision that allowed benefits effective August 19, 2018 finding Sheree A. Wenman (claimant) was able to work, available for work, and actively and earnestly seeking work. After due notice was issued, a telephone conference hearing was held on October 5, 2018 and was consolidated with the hearing for appeal 18A-UI-09692-SC-T. The claimant participated. The employer participated through Partner Tammy Sanders and Recruiter Maddie Bardole. No exhibits were offered into the record.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective August 19, 2018?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer hires and screens employees. It will offer its employees the opportunity to be considered for open positions with its clients. Once an employee agrees to have his or her resume sent to the client, the client will review the resume and, if interested, interview the employer's employee for the position. It is only after the client interview that a job offer will be made to the employee.

The claimant was employed with the employer from June 11, 2018 until her assignment ended on August 17, 2018. Before the claimant's last assignment ended, the employer spoke to the claimant about updating her resume for an employment opportunity with its client Halverson Trane. The employer had a resume on record and the claimant gave the employer permission to send it to Halverson. The claimant reviewed the job description and believed she did not possess the necessary education as she did not have an Associate's Degree, which was one of the qualifications for the position. The employer asked, and the claimant agreed, to update her resume to accentuate her work experience as she did not possess the necessary education.

On August 20, the employer contacted the claimant again asking for an updated resume to send to its client. On August 22 and 27, the employer again left messages for the claimant regarding an updated resume to send to Halverson. The employer did not send a certified letter to the claimant extending her an offer of work. The Halverson position was eventually filled before the claimant's resume was submitted.

The claimant was out of town from August 28 through September 3 to provide child care for her sick grandson. The claimant filed for and received benefits for the week ending September 1 stating she was able to and available for work. The claimant has been in town and has not had any restrictions on her ability to or available for work other than the week ending September 1, 2018. The claimant has been making two job searches each week.

On September 17 and September 21, the employer attempted to contact the claimant to offer her an opportunity to have her resume reviewed by its client Business Solver. The employer believed it was leaving voice messages for the claimant. The claimant does not have record of the voice messages and denied receiving the messages. The employer did not send a certified letter to the claimant extending her an offer of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work, available for work, and made an earnest search for work for each week effective August 19, 2018 with the exception of the week ending September 1, 2018.

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(2) provides, in relevant part:

Benefit 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(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant has established she is able to work, available for work, and actively and earnestly seeking work effective August 19, 2018 with the exception of the week ending September 1, 2018. The claimant was out of town providing child care for her sick grandson beginning Tuesday, August 28. The claimant was not available for work that week as she was out of town for personal reasons the majority of the work week. Accordingly, the claimant is eligible for benefits effective August 19, 2018, provided she is otherwise eligible, with the exception of the week ending September 1, 2018, for which benefits are denied.

DECISION:

The September 12, 2018, reference 03, unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective August 19, 2018 with the exception of the week ending September 1, 2018. Benefits are allowed effective August 19, 2018, provided the claimant is otherwise eligible, with the exception of the week ending September 1, 2018, for which benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn