

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHIL LARSON
Claimant

APPEAL NO: 15A-UI-11106-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRADESMEN INTERNATIONAL LLC
Employer

OC: 11/16/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 1, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 20, 2015. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a member of Tradesmen International. His "Local Job Territory" as an employee of the Des Moines Office is the area within a 65 mile radius, not highway miles, of your residence. If you are offered a work assignment within this Local job territory that involves either a trade in which you have previously performed work as a Tradesmen employee, or are otherwise qualified to perform, you will be expected to accept this assignment regardless of its anticipated duration, provided the rate of pay is consistent with your usual and customary wage rate as a Tradesmen employee" (Claimant's Exhibit A).

The claimant has been working in Ames and other surrounding towns as a travel employee since beginning his employment with this employer in May 2013. When his last assignment ended in late August 2015 the employer had additional work in Ames but the claimant told the employer he would not take another job in Ames and would rather stay in the Des Moines area.

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 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The claimant agreed to work in an area within 65 miles of his residence. While he argues that number constitutes round trip mileage, the Field Employee Call-In Policy does not state that is the case. Additionally, even if it is 65 miles round trip, the claimant has worked in Ames since his hire date with this employer and has consented to work in the Ames area. The employer had work available for the claimant in Ames but he effectively refused a suitable offer of work, stating he "wouldn't take a job in Ames" and he "would rather stay in the Des Moines area. The claimant has unduly limited his ability to work by refusing to work in the location he has been assigned to work since his date of hire. Consequently, the administrative law judge concludes the claimant is not able and available for work effective September 13, 2015. Therefore, benefits must be denied

DECISION:

The October 1, 2015, reference 01, decision is affirmed. The claimant is not able to work and available for work effective September 13, 2015. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css