

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSHUA S SIMAR**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 17A-UI-08536-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/18/17**  
**Claimant: Respondent (4-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 18, 2017 (reference 11) unemployment insurance decision that allowed benefits based upon a determination that claimant was on a temporary layoff. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2017. The claimant, Joshua S. Simar, participated. The employer, Advance Services, Inc., participated through Melissa Lewien, Risk Management. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work effective July 2, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a packaging employee assigned to work at Ferrara Candy, beginning June 20, 2017, until July 12, 2017, when he quit his employment. For the one-week period ending June 25, 2017, claimant worked 33.00 hours. Claimant believes he was sick for part of that week. For the one-week period ending July 2, 2017, claimant worked 24.00 hours. Claimant did not recall why he only worked a partial week. The parties agree that claimant was laid off for one week, from July 2 through July 8, due to the assignment closing. On July 12, 2017, claimant reported to the assignment that he was quitting for personal reasons.

Claimant has been looking for work since this separation. He has been applying for equipment operator and mechanic positions. Claimant has some barriers to employment, including a lack of a driver's license and a lack of necessary state certifications. He also has limited availability, due to personal circumstances. While he could work first-shift, he would have to be home by no later than 2:00 p.m. He is also available for third-shift work, which is the shift he worked at Ferrara Candy.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work for the weeks ending June 24 and July 1, 2017. For all subsequent weeks, claimant is 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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Here, claimant was employed in a full-time position with the employer for the weeks ending June 24 and July 1. His failure to work a full 40-hour week was due to personal illness and not due to a lack of work from the employer. Claimant has not established that he was available for work these two weeks. Claimant received partial unemployment benefits during these two weeks. The administrative law judge will remand this matter for determination of the overpayment.

Iowa Admin. Code r. 871-24.1 provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

*a. Layoffs*. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Both parties agree that the work assignment site was shut down for the one-week period ending July 8, 2017. Claimant was placed on temporary layoff at that time. He was able to work and available for that work during that one-week period. Subsequently, claimant was able to work and available for work. While he had some restrictions on his employment during that time, the administrative law judge believes claimant was searching for full-time work that fit his schedule. Benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The August 18, 2017 (reference 11) unemployment insurance decision is modified in favor of the appellant/employer. Claimant was not able to work and available for work for the weeks ending June 24, 2017, and July 1, 2017. Subsequently, claimant is able to work and available for work. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The overpayment created by claimant's receipt of benefits for the weeks ending June 24 and July 1 is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/scn