

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HERBERT O SPELLER
Claimant

ADESA DES MOINES LLC
Employer

APPEAL 15R-UI-07267-JP

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/25/15
Claimant: Appellant (2)**

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:

Claimant filed an appeal from a decision of a representative dated February 11, 2015, (reference 05) that held claimant not able to and available for work from January 25, 2015 through February 7, 2015. After due notice, an in-person hearing was scheduled for and held at 1000 E Grand Ave, Des Moines, Iowa on August 24, 2015. Claimant participated personally. Employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a lead van driver, and was separated from employment in early December 2014, when he quit to attend school.

Claimant left the employer in early December 2014 to attend DMACC. Claimant was going to school to obtain a class A driver's license (truck driving school). This was a six to eight week course. Claimant stopped reporting for work at the employer once he started school. Claimant completed his course on January 29 or 30, 2015. Prior to leaving for school, claimant tried to obtain a leave of absence from the employer, but this was denied. Claimant did not work from early December 2014 until he completed his course at the end of January 2015. Over the December 2014 holidays, claimant inquired with the employer about working. The employer was going to allow claimant could to work over the holidays. Because of a family emergency, claimant was unable to report to work over the holidays.

Claimant spoke with the employer and was told that he could come back to work by going online and applying for a job, because the job was still open. At the end of January 2015, beginning of February 2015, claimant worked one day through a temp agency. It was a one-day assignment. During this assignment, claimant was told by the manager in transportation (claimant's former supervisor) that he was not going to be rehired by the employer. Claimant then finished his

assignment and left. Claimant then sought other employment through the temp agency. Periodically, claimant found work. Claimant did not have any restrictions on his work between the claim period(s) of January 25, 2015 and February 7, 2015. Claimant also had no limits on the amount of hours he would work, he was willing and did accept temporary employment, and he was not self-employed between the claim period(s) of January 25, 2015 and February 7, 2015. Claimant was unavailable for work from December 2014 through January 2015 while he was in school.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective January 25, 2015.

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".

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

Claimant was unavailable for work from early December 2014 through January 29 or 30, 2015, while he attended school. After claimant completed his course work (January 29 or 30, 2015), claimant was able to and available to work. Claimant worked a one-day assignment and then was told he was not going to be re-hired by the employer and he finished his assignment and left. Inasmuch as claimant was unavailable from December 2014 through January 29 or 30, 2015, claimant was able to and available after he completed his course work (January 29 or 30, 2015). Benefits shall be allowed effective January 31, 2015 through February 7, 2015, provided claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 11, 2015, (reference 05) is reversed. Claimant is eligible to receive unemployment insurance benefits, effective January 31, 2015, provided claimant meets all other eligibility requirements.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs