

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURTIS A DECKER
Claimant

M A MORTENSON CO
Employer

APPEAL 18A-UI-12301-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/10/17
Claimant: Appellant (4)

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 claimant filed an appeal from the December 20, 2018, (reference 04) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2019. Claimant participated. Employer chose not to participate in the hearing.

ISSUE:

Is the claimant able to work and available for work effective November 25, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 4, 2018. Claimant last worked as a full-time heavy equipment operator. Claimant was separated from employment on November 21, 2018, when he resigned before a scheduled layoff.

On November 22, 2018, claimant suffered a loss in his family. On November 23, 2018, claimant returned to work and asked to take bereavement leave. Employer notified claimant it would be soon laying off employees for the season and allowed claimant to take an early layoff.

Employees in claimant's position were laid off on December 17, 2018. Claimant considered his bereavement leave over effective the same day and was available for work. Claimant has been checking in for work with his union as required.

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, and made an earnest search for work effective December 16, 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".

In this case, claimant restricted his employability until December 15, 2018, to tend to personal matters in his life. Claimant was available again effective December 16, 2018, and checked in with his union for available work as required.

DECISION:

The December 20, 2018, (reference 04) unemployment insurance decision is modified in favor of appellant. Claimant was not able to and available for work from November 25, 2018, until December 15, 2018. The claimant is able to work and available for work effective December 16, 2018. Benefits are allowed effective December 16, 2018, provided claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn