

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAY J ANDERSON
Claimant

BORDER STATES CONTRACT SVC INC
Employer

APPEAL 17A-UI-07141-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
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:

The claimant filed an appeal from the July 11, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work effective June 4, 2017. The parties were properly notified of the hearing. A telephone hearing was held on July 31, 2017. The claimant, Ray J. Anderson, participated. The employer, Border States Contract Service, Inc., did not register a telephone number at which to be reached and did not participate in the hearing. Claimant's Exhibits A and B were received and admitted into the record. The administrative law judge took official notice of the fact-finding documentation.

ISSUE:

Is claimant able to work and available for work effective June 4, 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 Supervisor, beginning sometime in 2011. Claimant was hired to work full-time hours for the employer.

Claimant had knee surgery on March 29, 2017, and he was released to return to work approximately one month later. Claimant wants to resume working full-time hours, but the employer has not offered these to claimant. He admits that he expressed a preference for the 1:00 p.m. to 9:00 p.m. shift, but he has been willing to work the other shift (5:00 a.m. to 1:00 p.m.). After the fact-finding interview, during which the employer stated the early shift was available, claimant attempted to contact the employer to resume working, but the employer has not responded to his calls or text messages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to work and available for work effective June 4, 2017.

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant provided unrefuted testimony that he was available to work any hours the employer offered him. However, the employer did not offer him the full-time early schedule. Instead, the employer has only offered him part-time hours. This reduction in hours and corresponding reduction in wages is attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The July 11, 2017 (reference 01) unemployment insurance decision is reversed. Claimant is able to work and available for work effective June 4, 2017. Benefits are allowed, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn