

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A PHELPS
Claimant

APPEAL NO. 16A-UI-09929-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/14/16
Claimant: Appellant (2/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Robert Phelps filed a timely appeal from the September 8, 2016, reference 01, decision that denied benefits for the week that ended August 20, 2016, based on an agency conclusion that Mr. Phelps had reported he was not ready, willing or able to work that week. After due notice was issued, a hearing was held on September 27, 2016. Mr. Phelps participate. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-09930-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KCCO, KFFV and fact-finding notes concerning the September 7, 2016 fact-finding interview.

ISSUES:

Whether Mr. Phelps was able to work and available for work during the week that ended August 20, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Phelps established an original claim for benefits that was effective August 14, 2016. On August 22, 2016, Mr. Phelps used the automated telephonic weekly claim reporting system to make his weekly claim for the week that ended August 20, 2016. Mr. Phelps responded appropriately to the prompts. Mr. Phelps reported that he was able to work, available for work and that he had made two employer contacts. Mr. Phelps had indeed made two employer contacts as part of his work search for that week.

On August 28, 2016, Mr. Phelps accessed the Iowa Workforce Development website to make his weekly claim for the week that ended August 27, 2016. Mr. Phelps encountered a message that indicated he had not made a claim for the week that ended August 20, 2016. So Mr. Phelps entered weekly claim information for the week that ended August 20, 2016. As part of this second weekly claim for the week that ended August 20, 2016, Mr. Phelps made an error. Instead of clicking the box that said he was able to work and available for work, Mr. Phelps erroneously clicked the box that indicated he was not able to work and available for work. The erroneous report that Mr. Phelps was not able to work and available for work,

prompted the Workforce Development computer system to flag Mr. Phelps' claim. However, Mr. Phelps did not receive an Unemployment Insurance Letter of Inquiry or notice of a fact-finding interview. Workforce Development records indicate that on September 1, 2016, the agency mailed notice of a fact-finding interview set for September 7, 2016 at 3:00 p.m. Mr. Phelps did not receive a telephone call from a Workforce Development representative or a voice mail message from a Workforce Development representative at or about the time of the scheduled fact-finding interview. Mr. Phelps was using a new phone and had not yet set up his voice mail. Mr. Phelps' first notice that there was a problem with this claim was his receipt of the September 8, 2016, reference 01, decision from which he appeals in this matter and a companion decision that asserted he had failed to report as directed.

REASONING AND CONCLUSIONS OF LAW:

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(1)a and (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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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 Administrative Code section 871 IAC 24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

The evidence in the record establishes that on August 22, 2016, Mr. Phelps made an appropriate claim for benefits for the week that ended August 20, 2016 and accurately reported that he was able to work and available for work. The evidence further establishes that Mr. Phelps was engaged in an active and earnest search for new employment during the week that ended August 20, 2016. The evidence establishes that on August 28, 2016, Mr. Phelps

reasonably concluded he was required to make a second weekly claim for the week that ended August 20, 2016. In the process of making that second weekly claim for the week that ended August 20, 2016, Mr. Phelps made an honest mistake by clicking that he was not able to work or available for work when the opposite was true. Mr. Phelps is eligible for benefits for the week that ended August 20, 2016, provided he meets all other eligibility requirements.

The administrative law judge is aware that a reference 03 overpayment decision was mailed on September 26, 2016 and that the overpayment decision asserts that Mr. Phelps was overpaid \$447.00 in benefits for the week that ended August 20, 2016. This matter will be remanded so that the agency can amend the overpayment decision in light of the present decision that allows benefits for the week that ended August 20, 2016, provided the claimant is otherwise eligible.

DECISION:

The September 8, 2016, reference 01, decision is reversed. The claimant was able to work, available for work, and actively and earnestly seeking new employment during the benefit week that ended August 20, 2016. The claimant is eligible for benefits for that week, provided he meets all other eligibility requirements.

This matter is remanded for entry of a decision that amends the September 26, 2016, reference 03, overpayment decision in light of the present decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs