

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NORMAN W DAVIS IV
4810 SE POWERS DR
RUNNELLS IA 50237

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-02889-JTT
OC: 01/29/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Claimant Norman Davis filed a timely appeal from the March 3, 2006, reference 03, decision that held him unavailable for work and disqualified him for benefits for the period of February 26, 2006 through March 4, 2006. After due notice was issued, a hearing was held on March 30, 2006. Mr. Davis participated and presented additional evidence through Local 246 Business Agent Bob Gilmore. The administrative law judge took official notice of the Agency's administrative records regarding the claim established January 29, 2006.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Norman Davis is a member in good standing of the Local 246 painters' union. Members of the union

normally obtain their employment through referrals received from the union. Since establishing his claim for benefits, Mr. Davis has maintained active contact with the union's business agent, Bob Gilmore. Mr. Davis has kept current on his membership dues. Mr. Davis appropriately registered for work through the union's placement service. At the end of February 2006, Mr. Davis left town for a few days to attend his daughter's funeral. Mr. Davis was in contact with the union's business agent before he left, had provided the union with appropriate contact information, and had indicated a willingness to immediately return to work if work became available. Mr. Davis was available for the majority of the benefit week(s) in question.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that whether Mr. Davis was available for work during the period of February 26, 2006 through March 4, 2006. It does.

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".

871 IAC 24.22(2)h 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.

(h) Availability for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available.

To be deemed available for work, a claimant must be earnestly and actively seeking work. Mere registration at any Workforce Development Center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. Iowa Workforce Development expects each individual claiming benefits to conduct himself as what any normal, prudent individual who is out of work. See 871 IAC 24.22(3).

Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with the placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made. See 871 IAC 24.22(3)(c).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Davis was indeed available for work during the period of February 26, 2006 through March 4, 2006. Accordingly, Mr. Davis is eligible for benefits for the benefit week that ended March 4, 2006.

DECISION:

The Agency representative's decision dated March 3, 2006, reference 03, is reversed. The claimant was available for work during the period of February 26, 2006 through March 4, 2006. The claimant is eligible for benefits for the benefit week that ended March 4, 2006.

JT/s