

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER L KING
Claimant

APPEAL NO. 13A-UI-04259-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PEORIA HOSPITALS MOBILE MEDICAL
SERVICES/ADVANCED MED TRANSPORT**
Employer

OC: 07/01/12
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the representative's decision dated April 5, 2013, reference 03, which denied unemployment insurance benefits effective March 3, 2013 finding that the claimant was not willing to work during the times that work was usually done in his occupation. After due notice was provided, a hearing was held in Burlington, Iowa on July 24, 2013. The claimant participated. The employer did not respond to the notice of hearing and did not participate.

ISSUE:

At issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Christopher King began employment with the captioned employer in March 2011. Mr. King was hired to work 36 hours per week as a paramedic and continued to do so until the employer closed one of its facilities. The closing of the facility resulted in full-time paramedics being assigned to the majority of the work hours that had been previously available to Mr. King.

Although Mr. King repeatedly asked for more hours and was willing to work more hours, he was only scheduled to work one eight-hour shift per week on Wednesdays. When the claimant explored the possibility of his one-day per week being transferred to Saturdays, he was no longer scheduled by the employer for an extensive period of time. The claimant has remained able and available to accept work shifts offered by Peoria Hospitals Mobile Medical Services. It is the claimant's preference to have scheduling days "back to back" if possible, to reduce driving expenditures to and from the work location. The claimant has not stated to his employer that he would decline scheduling if it were not back to back, but only made that request.

The claimant is not engaged in self-employment but assists his fiancé in her business when Mr. King is not occupied to perform his services for Peoria Hospitals Mobile Medical Services or seeking other employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant has placed conditions on his availability to effectively remove him from the labor market. He has not.

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".

An otherwise eligible claimant is eligible to receive unemployment insurance benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and accurately seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements.

To satisfy the able requirement an individual must be physically and mentally able to work at some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

871 IAC 24.22(2) provides as follows: To satisfy the availability requirement an individual must be willing, able and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual must be 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. The labor market for an individual means a market for the type of service which the individual offers in the geographic area in which the individual offers the services. Market does not mean job vacancies must exist, the purpose of the unemployment insurance is to compensate for lack of job vacancies. It means only the type of services that the individual is offering is generally performed in the geographic area which the individual is offering his services.

There being no evidence to the contrary, the administrative law judge concludes that Mr. King has established his burden of proof in establishing that he is able and available for work and that he has not set up any limitations on his availability which would unreasonably limit him from available work. The claimant testified that he only had requested the possibility of some accommodations but had not refused work and that after making the request the employer was less willing to assign him although he remained able and available to accept the assignments.

DECISION:

The representative's decision dated April 5, 2013, reference 03, is reversed. The claimant has not unduly limited his availability for work. Benefits are allowed as of March 3, 2013, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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