

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT L TARR
Claimant

CLOVERLEAF COLD STORAGE
Employer

APPEAL 17A-UI-09344-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/21/17
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Scott L. Tarr (claimant) filed an appeal from the August 29, 2017, reference 07, unemployment insurance decision that denied benefits based upon the determination he was not able to and available for work for the three weeks ending August 26, 2017. After due notice was issued, a telephone conference hearing was held on September 29, 2017. The claimant participated. Cloverleaf Cold Storage (employer) did not respond to the hearing notice and did not participate. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the three-week period ending August 26, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was offered a job with the employer on Tuesday, August 8, 2017. However, he told the employer he was unable to accept the position or provide a definite answer as his wife was in the hospital. The claimant and employer spoke again on Friday, August 11, 2017, and the claimant reiterated that he was unable to make a decision as his wife was in the hospital. The employer is four and a half hours away from his current home and he and his wife were contemplating moving to that locale which is why the claimant applied for the job.

On Monday, August 14, 2017, the claimant's wife was released from the hospital. The claimant made two job searches that week both in the town in which he currently lives.

On Sunday, August 20, 2017, the claimant's wife was again hospitalized and released on Thursday, August 24, 2017. However, the claimant was not required to be at the hospital to assist with her care. He had a job interview on Tuesday, August 22, 2017 and conducted his two job searches that week, both with companies about an hour from his home.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work for the one-week period ending August 12, 2017. However, he was able to work, available for work, and actively and earnestly seeking work effective August 13, 2017.

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".

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(18) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was not available for work the week ending August 12, 2017. He had identified Monmouth, Illinois as being a geographical area in which he was willing and able to work. However, when offered a job, he declined to work in that geographical area due to his wife being in the hospital. While the claimant's decision is understandable, it does render him not eligible for unemployment insurance benefits as he was not available for work in the geographical area identified due to personal reasons. Benefits are denied for the one-week period ending August 12, 2017.

The claimant was available for work effective August 13, 2017, as his wife was released from the hospital and he was no longer needed nearby. The claimant was available for work and actively searching for work. When his wife returned to the hospital, the claimant was not needed at the hospital with his wife and went on an interview that week while she was in the hospital. Benefits are allowed effective August 13, 2017, provided he is otherwise eligible.

DECISION:

The August 29, 2017, reference 07, unemployment insurance decision is modified in the claimant's favor. The claimant was not available to work the one-week period ending August 12, 2017 and benefits are denied for that week. The claimant was able to work and available for work effective August 13, 2017. Benefits are allowed effective August 13, 2017, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn