

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARL R KIOUS
Claimant

APPEAL 20A-UI-01013-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/05/20
Claimant: Appellant (3)

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:

On February 4, 2020, Carl R. Kious (claimant) filed an appeal from the January 30, 2020, reference 03, unemployment insurance decision that denied benefits for the week ending January 11, 2020 based upon his report that he was not able to and available for work. After due notice was issued, a telephone hearing was held on February 17, 2020 and consolidated with the hearings for appeals 20A-UI-00937-SC-T and 20A-UI-01014-SC-T. The claimant participated personally. J's Custom Works, LLC (employer) participated through Jeremiah Schacherer, CEO. The Employer's Exhibit 1 was admitted into the record.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective January 5, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective January 5, 2020 following a permanent separation from the employer. He filed continued weekly claims for benefits for the weeks ending January 11, January 18, January 25, and February 1. The claimant accidentally reported he was not able to and available for work for the week ending January 11. During that week, he was in the normal geographical area, made two job contacts, and was not medically limited in his ability to work.

The claimant reported on his weekly claims for January 18 and January 25 that he was able to and available for work. However, the claimant had traveled to another state for personal reasons during that two-week period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work, available for work, and made an earnest search for work for the week ending January 11, 2020. Benefits are allowed, provided he is otherwise eligible. The claimant was not able to and

available for work during the weeks ending January 18 and January 25, 2020. Benefits are denied for that period.

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, in relevant part:

Benefit 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(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

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 has established he was able to and available for work for the week ending January 11, 2020. Benefits are allowed provided he is otherwise eligible.

The claimant was out of town for personal reasons for the weeks ending January 18 and January 25. He cannot establish he was available for work. Benefits are denied for those two weeks.

DECISION:

The January 30, 2020, reference 03, unemployment insurance decision is modified in favor of the respondent. The claimant is able to work and available for work the week ending January 11, 2020. Benefits are allowed, provided he is otherwise eligible. The claimant was not available for work for the weeks ending January 18 and January 25, 2020. Benefits are denied for those two weeks.



Stephanie R. Callahan
Administrative Law Judge

February 26, 2020
Decision Dated and Mailed

src/scn