

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRIAN H BOESEN
Claimant

CITY OF WATERLOO FINANCE DEPT
Employer

APPEAL NO. 16A-UI-11436-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/25/16
Claimant: Appellant (1R)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 12, 2016 reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on November 4, 2016. Claimant participated personally. Employer participated by Cheryl Huddleston. Claimant failed to respond to the hearing notice and did not participate. Employer's exhibits 1-3 were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired to work as a full time animal control services operator for employer. Included within the necessary requirements of Acceptable Experience and Training for the job is a "Valid Iowa Driver's License".

Employer came to know of claimant's loss of license as a result of an accident claimant experienced. An OWI charge was issued to claimant and the IDOT revoked claimant's license. Employer kept claimant working for a period of time before employer received information that claimant no longer had a valid license. Employer suspended claimant during the period of time when claimant is unable to perform the duties of his job. (Employer stated that claimant was placed on leave, but whereas this leave was not agreed to between the parties, the administrative law judge deems it to be a suspension). Claimant remains suspended at this time as he cannot obtain a license until at least January 28, 2017. Claimant has remained capable of completing jobs that are requested, but is not able to legally do the driving required for the job he'd been hired to do.

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 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.

Claimant remains unable to do the driving portion of his work at this time, but remains capable of doing normal, productive work. Employer stated that for a period of time claimant had been doing other work, but employer had to increase part-time workers' hours in order to compensate for claimant's inability to drive. This inability to drive does not equate to claimant being unable to work – he is simply unable to work in the capacity for which he was hired.

This administrative law judge is not addressing the issue of whether claimant's job separation is disqualifying from his receipt of unemployment benefits as that was not the issue before the court. That matter will be remanded to the fact finder for further determination.

DECISION:

The decision of the representative dated October 12, 2016, reference 01 is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective September 25, 2016, provided claimant meets all other eligibility requirements. This matter is remanded to the fact finder for determination as to whether the separation issue is disqualifying.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs