

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY S WELANDER
Claimant

APPEAL NO: 13A-UI-03179-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/17/13
Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Timothy Welander (claimant) appealed an unemployment insurance decision dated March 13, 2013, reference 02, which held that he was not eligible for unemployment insurance benefits because he does not meet the availability requirements of the law. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on April 11, 2013. The claimant participated in the hearing. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant is not medically able to drive a car, a forklift or heavy machinery. He is willing to work but is not able to work because he does not have transportation. The claimant has worked factory jobs and lives in a small town where no work is available. He cannot take a bus and his wife is not able to transport him back and forth to work.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. For the reasons that follow, the claimant is not able to work.

In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code §96.4(3) and 871 IAC 24.22. An individual must be able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides. See 871 IAC 24.22(1)(b).

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 24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). He is restricted from driving a car, forklift and/or heavy machinery and has no other means of transportation. The claimant could walk to work but there is no work available in the small town in which he lives. He acknowledged that he is willing but not able to work at this time. The claimant does not meet the availability requirements of the law for week and benefits are denied.

DECISION:

The unemployment insurance decision dated March 13, 2013, reference 02, is affirmed. The claimant does not currently meet the availability requirements of the law and benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/tll