

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVE GARNER
Claimant

APPEAL 15A-UI-05094-JC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/04/15
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 23, 2015, (reference 02), unemployment insurance decision that denied benefits based upon the claimant not being able and available for work. After due notice was issued, an in-person hearing in Creston, Iowa was scheduled to be held on June 10, 2015. The claimant participated. Claimant Exhibit One and Department Exhibit D-1 were admitted into evidence.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant became unemployed on October 26, 2014 following a fire at his employer's place of business. The claimant was paid wages until January 1, 2015.

The claimant has a history of coronary heart disease and has previously applied for disability benefits but was denied due to working full-time hours. At the time of the fire, the claimant was working full time and has a 50-pound weight lifting restriction in place, which is not expected to be removed. Following the layoff from the employer, the claimant again filed for disability benefits and was granted benefits effective March 9, 2015. The claimant was paid a monthly payment for April benefits on May 28, 2015 in the amount of \$1347, and continues to collect his disability benefits. The claimant has learned that if he were to earn wages over \$1090 per month or 25 hours of work per week at his existing pay rate, that his disability benefits would be reduced and offset by wages earned. The claimant had therefore, restricted his availability to no more than 25 hours or \$1090 in weekly wages so that he does not lose his disability payments.

The claimant has been separated as a temporary layoff since October 26, 2014 and is expected to return in late fall 2015 (Claimant Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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(3) and (22) provide:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

An individual claiming benefits must be able to work and available for work. The claimant performed full-time work until the layoff due to fire in October 2014. The claimant has since restricted his ability to perform work to 25 hours or less, in order to preserve his disability payments. The claimant has communicated to his employer that when he returns in fall 2015, he will only work 25 hours or less so that his disability payments are not impacted. Since the claimant has limited the number of hours he can work due to the receipt of disability benefits, he is no longer able and available under Iowa law. Accordingly, benefits are denied.

DECISION:

The April 23, 2015, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective January 4, 2015. Benefits are denied.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css