

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRETT HERSOM
Claimant

APPEAL NO: 18R-UI-10359-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF ANKENY
Employer

OC: 08/12/18
Claimant: Appellant (4R)

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 August 27, 2018, (reference 01) unemployment insurance decision that denied benefits based upon the claimant not meeting the availability requirements. A first hearing was scheduled but not conducted on September 21, 2018. The claimant failed to appear for the hearing and it was dismissed. The claimant made a successful request to have the hearing reopened to the Employment Appeal Board (EAB), who remanded the matter for a new hearing.

The parties were properly notified about the hearing. A telephone hearing was held on October 31, 2018. The claimant participated personally. The employer participated through Dawn Gean, human resources director.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant able to and available for work beginning August 12, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time seasonally for the City of Ankeny from April 1, 2018 until July 25, 2018 when he permanently separated from employment. (The claimant last physically performed work on July 21, 2018 for the employer.) That separation has not yet been determined at the claims level.

After separation, the claimant established his claim for unemployment insurance benefits, with an effective date of August 12, 2018. The claimant's current group code is "3", representing that

he is currently temporarily unemployed. As a result, he has not been required to make weekly job search contacts.

Effective August 12, 2018, the claimant sought full-time employment and had a short term restriction with his left arm due to surgery on July 27, 2018. For approximately three weeks, he could not lift more than five to ten pounds with his left arm. Even with restriction, the claimant has been able to and available for employment in the construction field. Effective October 1, 2018, he accepted new full-time employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able to and available for work August 12, 2018 through September 29, 2018. The claimant is not able and available for work effective September 30, 2018 due to accepting new employment.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). The rules also provide that an individual is disqualified for being unavailable to work if an individual has a medical report stating the individual is unable to work. 871 IAC 24.23(6).

In this case, the evidence establishes the claimant is able to and available for work as defined by the unemployment insurance law. In this case, the claimant established his claim in response to his permanent separation from the City of Ankeny. Even though the claimant had limitations to his left arm at the time he opened his claim, the limitations themselves are not so restricting that the claimant would not be able to perform any work for which the claimant, given his proven experience, abilities, and training, is reasonably available for. For this reason, the administrative law judge concludes the claimant was able to and available for work August 12, 2018 through September 29, 2018.

Effective September 30, 2018, the claimant would not meet the eligibility requirements due full-time employment. Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Accordingly, benefits are denied effective September 30, 2018.

Cognizant that the claimant is now employed and the issue is moot, the credible evidence does not support the claimant was ever on a seasonal, temporary layoff, Code 3 employee.

Iowa Admin. Code r. 871—24.2(96) provides in pertinent part:

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, **of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer."** This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6." (Emphasis added)

REMAND: The issues of the claimant's permanent separation from the City of Ankeny, effective July 25, 2018 and whether his group code should be modified are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The August 27, 2018, (reference 01) decision is modified in favor of the claimant/appellant. The claimant is able to and available for work August 12, 2018 through September 29, 2018. Benefits are allowed for this period, provided he is otherwise eligible. The claimant is not able to and available for work effective September 30, 2018 and benefits are denied thereafter.

REMAND: The issues of the claimant's permanent separation from the City of Ankeny, effective July 25, 2018 and whether his group code should be modified are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn