

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD E TUECKE
Claimant

NORTH END AUTO WRECKING INC
Employer

APPEAL 21A-UI-00777-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/30/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 8, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 11, 2021, at 9:00 a.m. Claimant participated. Employer participated through Lois Lampe, Office Manager. No exhibits were admitted.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Driver with North End Auto Wrecking from November 27, 2018 until June 16, 2020. Claimant filed an initial claim for benefits effective August 30, 2020. Claimant was released by his physician as being able to work prior to filing his initial claim. Since August 30, 2020, claimant has not been sick or hospitalized. Claimant has no other barriers to employment.

The issue of separation has not been the subject of a fact-finding interview or decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

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 provides in pertinent part:

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.

(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.

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.

Claimant had no barriers to employment since filing his initial claim for benefits. Claimant has been able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

The issue of separation should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The December 8, 2020 (reference 01) unemployment insurance decision is reversed. Claimant is able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
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February 22, 2021
Decision Dated and Mailed

acw/scn