

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELVIN L MCKINNEY
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 18A-UI-10099-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/09/18
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Melvin L. McKinney (claimant) filed an appeal from the September 27, 2018, reference 03, unemployment insurance decision that denied benefits based upon the determination he was not able to and available for work effective September 9, 2018. After due notice was issued, a telephone conference hearing was held on October 22, 2018. The claimant participated. QPS Employment Group, Inc. (employer) participated through Unemployment Specialist Mai Lor and Placement Coordinator Janine Morazan. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective September 9, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant separated from his most recent assignment with the employer on September 6, 2018. He was offered another assignment, but declined as his wife had a high risk pregnancy and was scheduled to have a caesarian section on September 14, 2018. He told the employer he wanted to be away from work for at least a week following the birth of the child. The employer invited him to make contact when he became available for work.

The claimant filed his claim for benefits effective September 9, 2018. He participated in a fact-finding interview on September 25, 2018 regarding, in part, his ability to and availability to work. The claimant told the fact-finder that, even though the baby had been born, he needed to be home to help his wife care for the baby and other children.

The claimant received the unemployment insurance decision denying him benefits the week of September 30, 2018. He is no longer limiting his availability for work as his wife is now able to care for the children on her own. He is applying for full-time employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to available for work from September 9 through September 29, 2018 and benefits during that timeframe are denied. The claimant has made himself available for work effective September 30, 2018 and benefits are allowed after that time, provided he 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(2) provides, in relevant part:

Benefit 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.

...

I. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(8) Where availability to work unduly limited because of not having made adequate arrangements for child care.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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. The claimant's contention he was available for work beginning September 17, 2018 is not persuasive given the statements he made to the fact-finder on September 25, 2018. The claimant was not able to and available for work from September 9 through September 29, 2018 as he needed to be home to care for his wife and children. Accordingly, he is not eligible for unemployment insurance benefits during that timeframe.

The claimant has established he is now able to and available for work effective September 30, 2018. Benefits are allowed effective September 30, 2018, provided he is otherwise eligible.

DECISION:

The September 27, 2018, reference 03, unemployment insurance decision is modified in favor of the appellant, in this case the claimant. The claimant was not available to work from September 9 through September 29, 2018 and is not eligible for benefits during that time. The claimant is able to work and available for work effective September 30, 2018. Benefits are allowed effective September 30, 2018, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn