

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL SCHAFER
Claimant

GIT N GO CONVENIENCE STORES INC
Employer

APPEAL 21A-UI-19778-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Respondent (1R)

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:

The employer, Git-N-Go Convenience Stores, Inc., filed an appeal from the August 25, 2021, (reference 02) unemployment insurance decision that granted benefits based upon the finding he was able to and available for work for the August 8, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on October 28, 2021. The claimant did not participate. The employer participated through Director of Marketing Randy Ratcliff. Exhibits 1 and 2 were received into the record. Official notice was taken of the agency records.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending August 8, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Michael Schafer, worked full-time as an assistant store manager from May 20, 2021, until he was terminated on August 6, 2021. The claimant's immediate supervisor was Hiring Manager Lanette Butt.

On August 6, 2021, the claimant wanted the day off. The claimant had a dispute with his immediate supervisor regarding whether he would work the shift or not. During this argument, the claimant used the phrase "fuck you." His supervisor terminated him that same day reasoning his use of the phrase was insubordination. Other than this dispute regarding the claimant's availability on August 6, 2021, Mr. Ratcliff is unaware of any other issues regarding the claimant's ability to and availability for work.

The administrative record KCCO shows the claimant made weekly claims for the weeks ending August 14, 2021, August 29, 2021, September 4, 2021, September 11, 2021, September 18, 2021 and September 25, 2021. He did not make the two requisite employer contacts for the week ending September 25, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective August 8, 2021.

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(1)a 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.

(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.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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.

(3) *Earnestly and actively seeking work.* Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. *Basic requirements.* An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

- (1) Making application with employers as may reasonably be expected to have openings suitable to the individual.
- (2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.
- (3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.
- (4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.
- (5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

Iowa Admin. Code r. 871-24.23 provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

To the extent that the record contains information regarding the claimant's ability to and availability for work, it is regarding one day, August 6, 2021. The claimant's refusal to work one day out of a week does not disqualify him from benefits. He must be unwilling to work the majority of a week. See Iowa Admin. Code r. 871-24.23 (29). Accordingly, he is eligible for unemployment insurance benefits.

The administrative record shows the claimant has not conducted any job searches for the week ending September 25, 2021. The claimant has not received any prior warning to expand his job search. This is the claimant's warning that he must conduct two job searches each week. However, as he did not receive a prior warning, benefits are allowed effective September 25, 2021.

DECISION:

The August 8, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant was able to work and available for work effective August 8, 2021. Benefits are granted, provided he is otherwise eligible.

REMANDS:

The administrative law judge is remanding to the Benefits Bureau the issue regarding the claimant's separation from employment with due process rights given to both parties. Additionally, the claimant's group code needs to be updated to a "6" and work searches are required.



Sean M. Nelson
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November 15, 2021
Decision Dated and Mailed

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