

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY J BOWDEN**  
Claimant

**APPEAL NO. 06A-UI-09386-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEIERANT LEASING INC**  
Employer

**OC: 08/20/06 R: 04  
Claimant: Respondent (1)**

Iowa Code section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Meierant Leasing filed a timely appeal from the September 20, 2006, reference 03, decision that allowed benefits and that concluded the claimant was able and available for work. After due notice was issued, a hearing was held on October 5, 2006. Claimant Terry Bowden participated. Cheryl Vradenburg, President of Meierant Leasing, represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 06A-UI-09385-JTT. The administrative law judge took official notice of the Agency's administrative regarding benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant has been able and available since establishing his claim for benefits.  
Whether the claimant's part-time self-employment prevents him from being able and available for benefits.  
Whether the claimant continues to be available for work to the same extent that he was available for work during his base period.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bowden separated from his employment with Meierant Leasing on August 11, 2006. Terry Bowden established a claim for benefits that was effective August 20, 2006 and has received benefits.

Cheryl Vradenburg is President and owner of Meierant Leasing. Arthur Vradenburg is President and owner of Vradenburg Enterprises. Arthur Vradenburg and Cheryl Vradenburg are husband and wife. From December 13, 2004 until July 31, 2005, Terry Bowden was employed as a part-time truck driver employed by Vradenburg Enterprises. Effective August 1, 2005, Mr. Bowden became an employee of Meierant Leasing and continued to perform the same duties. Effective August 1, 2005, Meierant Leasing "leased" Mr. Bowden and other truck drivers to Vradenburg Enterprises. Mr. Bowden's employment was continuous and he was largely, or totally, unaware of the change of employer that occurred on August 1, 2005. Arthur Vradenburg supervised Mr. Bowden's employment beginning in December 2004 and continued to supervise

Mr. Bowden's employment after Mr. Bowden became an employee of Meierant Leasing. Mr. Bowden's truck driving duties involved transporting household goods and cardboard within a hundred mile radius of Keokuk. Mr. Bowden's regular work hours were 7:00 a.m. to 3:00 p.m., Monday through Thursday and varied hours on occasional Fridays.

Mr. Bowden operated a garbage collection service on the side and collected garbage on Thursday after work and on Fridays from 7:30 a.m. to 2:00 p.m. Mr. Bowden had operated the side business throughout the employment with Vradenburg Enterprises and Meierant Leasing. Mr. Bowden continues to operate the garbage collection business and collects garbage on Thursdays, 11:00 a.m. to 3:00 p.m. and on Fridays, 7:30 a.m. to 2:00 p.m.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether Mr. Bowden has been able and available for work since establishing his claim for benefits.

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".

871 IAC 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 Workforce Development rule 871 IAC 24.22(2)(f) provides as follows:

f. Part-time worker, student—other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Iowa Workforce Development rule 871 IAC 24.22(2)(h) provides as follows:

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

The evidence in the record establishes that Mr. Bowden establishes that Mr. Bowden's base period wage credits are based on a pattern of part-time employment. The evidence further indicates that Mr. Bowden had continued to be available since filing his claim to the same extent he was available to work for the employer during the base period employment. The evidence further indicates that Mr. Bowden is available for work, other than his garbage collection business, during the major part of the week. Base on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bowden has been available for work since establishing his claim for benefits. Mr. Bowden is eligible for benefits, provided he is otherwise eligible.

**DECISION:**

The Agency representative's September 20, 2006, reference 03, decision is affirmed. The claimant has been available for work since establishing his claim for benefits. The claimant has been available for work to the same extent he was available for his base period employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs