

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL C SMITH
Claimant

APPEAL NO. 11A-UI-11228-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**"AMERICAN BLUE RIBBON HOLDINGS
LLC
"VILLAGE INN & BAKERS SQUARE**
Employer

**OC: 07/17/11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 23, 2011, reference 01, which denied unemployment insurance benefits as of July 17, 2011 finding the claimant did not meet the availability requirements of the law. After due notice, a telephone hearing was held on September 19, 2011. Claimant participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue is whether the claimant was unduly limiting his availability for work by not being willing to work the hours in his occupation.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Daniel Smith was employed by Village Inn and Bakers Square from March 31, 2010 until July 8, 2011 when he was separated from employment. Mr. Smith worked as a prep cook and was paid by the hour.

Mr. Smith was hired full-time but subsequently the employer unilaterally cut the claimant's working hours to five to six working hours per week. During the course of his employment Mr. Smith had, at times, been unable to come into work on scheduled days off although he had been summoned by his employer. Mr. Smith had often made other plans and was unable to work for those reasons and had explained the reasons to his employer. At other times the employer did not provide Mr. Smith adequate notice that they were calling him in for an otherwise scheduled day off. Mr. Smith was sick on some days but properly reported his absences and the reasons for them.

The claimant has actively been seeking new employment and is willing to work without undue limitations on hours, location and/or duties.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant has unduly limited his hours of availability for work and thus has not met the availability requirements of the law. He has not.

Iowa Code § 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".

The evidence in the record shows that Mr. Smith has been willing to work normal hours and has not unduly limited his availability for work. The claimant at times was unable to report when called in on scheduled days off with his previous employer because the claimant had made plans or the employer did not provide sufficient notice to Mr. Smith that he would be needed on an otherwise scheduled day off. When absent due to illness the claimant has provided required notice to the employer and his absences were necessary because he was ill.

Based upon the evidence in the record the administrative law judge concludes that the claimant has established that he is available for work within the meaning of the Iowa Employment Security Law. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 23, 2011, reference 01, is reversed. Claimant has not unduly limited his availability. Claimant is available for work within the meaning of the Iowa Employment Security Law. Unemployment insurance benefits are allowed as of July 17, 2011, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs