

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS J MILLER
Claimant

APPEAL NO. 10A-UI-09229-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 05/23/10
Claimant: Appellant (1-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Travis Miller, filed an appeal from a decision dated June 29, 2010, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 13, 2010. The claimant participated on his own behalf and was represented by Steven Egli. The employer, Lutheran Services, participated by Program Supervisor Holly Erickson.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Travis Miller filed a claim for unemployment benefits with an effective date of May 23, 2010. He had filed a prior claim with an effective date of May 24, 2009.

On June 9, 2009, the claimant accepted a full-time job as youth specialist with Lutheran Services. He reported his wages each week on that claim while he was working 40 hours each week through the current date.

REASONING AND CONCLUSIONS OF LAW:

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 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant is working full-time hours and has been since June 2009. He is working to such an extent as to remove him from the labor market. Under the provisions of the above Administrative Code section, he is not able and available for work and ineligible for unemployment benefits.

The issue of whether he was eligible for benefits after June 9, 2009, on the prior benefit year should be remanded for determination.

DECISION:

The representative's decision of June 29, 2010, reference 02, is affirmed. Travis Miller is not able and available for work in the labor market generally, as he is currently employed full-time.

The issue of whether he was able and available for work during his prior benefit year beginning June 9, 2009, due to being employed full-time, is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw