

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEFFREY R MCQUISTON
Claimant

APPEAL NO: 18A-UI-02544-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

OC: 05/07/17
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

SDH Education West (employer) appealed a representative's February 15, 2018, decision (reference 03) that concluded Jeffrey McQuiston (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 21, 2018. The claimant did provide a telephone number for the hearing but did not respond when the administrative law judge spoke to him. The administrative law judge called the number two more times and left a message with an answering machine. The claimant did not return the administrative law judge's call and, therefore, did not participate in the hearing. The employer was represented by Pixie Allan, Hearings Representative, and participated by Louis Desaulty, General Manager of Dining Services. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 8, 2010, as a full-time cook. In November 2017, the claimant sent the employer a letter stating his retirement date would be January 26, 2018. He would be taking two weeks of vacation before his retirement. Therefore, his last day of work would be January 12, 2018.

The employer shut down its operation and laid off employees from December 14, 2017, to January 5, 2018. Employees were expected to return to work on January 6, 2018. On January 5, 2018, the claimant sent a text to the executive chef stating he was quitting effective January 5, 2018, because he was tired. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able and available for work as of December 17, 2017.

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. 871-24.23(22) provides:

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

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant said he was retiring and removed himself from the workforce. When an employee limits his wages to be eligible for a form of social security benefits, he is considered to be unavailable for work. In this case, the claimant did not provide any information about being able and available for work. He has not met his burden of proof. Therefore, the claimant is considered to be unavailable for work as of December 17, 2017. The claimant is disqualified from receiving unemployment insurance benefits beginning December 17, 2017.

DECISION:

The representative's February 15, 2018, decision (reference 03) is reversed. The claimant is not able and available for work as of December 17, 2017.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs