

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANNER B RICO
Claimant

APPEAL NO. 14A-UI-07467-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES COLD STORAGE CO INC
Employer

OC: 06/22/14
Claimant: Appellant (1)

Section 96.4-3 – Able & Available for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 22, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on August 12, 2014. The claimant did participate. The employer did participate through Chad Witte, Vice-President.

ISSUE:

Was the claimant able to and available for work effective June 22, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed for his second stint of employment full time beginning November 12, 2013 through date of hearing as he remains employed. During the summer months when the employer business is slow, they have employees like the claimant perform other duties to keep the facility in working order. Such duties include, mowing the grass, painting building and general repair and clean up. The claimant could have worked 40 hours per week performing his regular duties and the additional ones but he simply chose not to do so. One of the claimant's coworkers, Matt, choose not to work the hours that he could have.

The claimant additionally missed work because he did not have child care for his young daughter. As of the date of the hearing the claimant was again working Monday through Friday eight to five.

The employer's time keeping records indicate that from January 2014 through August 2014 the claimant only worked 40 hours on two separate occasions. Often times the claimant was not working his full hours because he requested time off. He also indicated that he was not always able to work forty hours per week because he did not have a babysitter. For the week ending June 21 the claimant worked 31.5 hours, for the week ending June 28, the claimant worked 24 hours, for the week ending July 5 the claimant worked 24 hours, for the week ending July 12 the claimant worked 20.25 hours; for the week ending July 19 the claimant worked 20 hours; for the week ending July 26 the claimant worked 18 hours and for the week ending August 2 the claimant worked 17.5 hours. The claimant was paid \$11.00 per hour and his reporting of wages

earned is not accurate. The claimant could have worked forty hours per week, but simply choose not to do so because he did not like the work he was to perform.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant did not have child care during some occasions he did not work. He is not considered able to and available during those times when he did not work due to lack of child care. The administrative law judge is persuaded that the claimant could have worked up to 40 hours per week, but his own work record indicates he simply never worked all the hours that were available to him. The claimant did not work in the summer because he did not like the work and thought the jobs were in his words, "crap" so he chose to go home instead of working. Failure to work all hours available for him renders the claimant not able to and available for work. Benefits are denied.

DECISION:

The July 22, 2014 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective June 22, 2014. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css