

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAVUS G BONMON
Claimant

APPEAL NO. 14A-UI-00656-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 12/15/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 14, 2014, reference 01, which denied unemployment insurance benefits effective December 15, 2013 finding he was not eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 11, 2014. Claimant participated. The employer participated by Ms. Katherine Wilson, Staffing Consultant.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Javus Bonmon began employment with Remedy Intelligent Staffing, Inc. in June 2007. Mr. Bonmon has been assigned to work by Remedy Intelligent Staffing, Inc. at General Mills at its client's location. On December 15, 2013, Mr. Bonmon was told by an employee of the General Mills facility that work at the General Mills facility would be reduced during the holiday season. Mr. Bonmon did not contact his employer, Remedy Intelligent Staffing, Inc. to verify whether continuing work at the job assignment was available to him as required by company policy.

Remedy Intelligent Staffing, Inc. had continuing employment available to Mr. Bonmon at the General Mills facility the next working day and thereafter, however, Mr. Bonmon did not report for that available work and was not aware of it because he had failed to contact Remedy Intelligent Staffing, Inc. to be notified of where and what time to report.

During this time Remedy Intelligent Staffing, Inc. was repeatedly leaving messages for Mr. Bonmon at the telephone number that he had provided to the company, in the attempt to have Mr. Bonmon report for available work at the General Mills location. The employer repeatedly left requests for Mr. Bonmon to contact them, however, the claimant did not respond to any of the numerous messages left for him. The claimant did not call in to Remedy Intelligent Staffing, Inc. as required for additional information and assignments, as required by company

policy, because he did not have a personal telephone during this time. Mr. Bonmon did not avail himself of other telephones or go in person to Remedy Intelligent Staffing, Inc. to maintain contact for work assignments that continued to be available to him. When Mr. Bonmon did not report for ongoing employment nor respond to the repetitive messages that were left by the company to contact them, the employer removed Mr. Bonmon's name from company employment lists. (The administrative law judge will make no decision on this job separation as the parties were unwilling to waive notice on the job separation issue).

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was able and available for work within the meaning of the Employment Security Law. It does not.

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(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In the case at hand the evidence in the record establishes that Mr. Bonmon had placed limitations on his employability that prevented him from being able and available to accept ongoing employment available through Remedy Intelligent Staffing, Inc. at the General Mills work location where Mr. Bonmon had been assigned.

Mr. Bonmon was aware that he had a responsibility to contact Remedy Intelligent Staffing, Inc. about employment issues and scheduling and that he was required to maintain adequate contact with Remedy Intelligent Staffing, Inc. so that he could be assigned to work when work was available through the company.

Work continued to be available to Mr. Bonmon at the General Mills facility through Remedy Intelligent Staffing, Inc. as of December 15, 2013, however, the claimant relied upon information provided by a person who was not employed by Remedy Intelligent Staffing, Inc. and the claimant did not contact Remedy Intelligent Staffing, Inc. for continuing job assignments as

required. Mr. Bonmon did not call in as required and did not respond to numerous messages that were left for him to contact the company for ongoing work assignments. Work at the same hours and wages as contemplated in the original agreement of hire between the claimant and Remedy Intelligent Staffing, Inc. continued to be available to Mr. Bonmon, however, the claimant did not work the hours available to him because he had limited his availability by not contacting Remedy Intelligent Staffing, Inc. for ongoing work assignments and did not respond to repeated messages to contact the employer for an extended period of time.

For the reasons stated herein, the administrative law judge concludes that the claimant has not been able and available for work within the meaning of the Employment Security Law. Benefits are denied effective December 15, 2013.

Although the administrative law judge concludes that a separation from the employment has taken place in this case, the parties were not willing to waive notice on that issue, therefore, no decision on the job separation has been entered in this matter. The issue of whether the claimant has been separated from his employment with this employer is remanded to the Claims Division for investigation and the issuance of an appealable determination.

DECISION:

The representative's decision dated January 14, 2014, reference 01, is affirmed. The claimant is not able and available for work effective December 15, 2013 due to limitations he has imposed on his availability. Work continued to be available as of December 15, 2013 at the same hours and wages as agreed upon but the claimant did not make himself available for that ongoing employment.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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