

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DYLAN FINZEL
Claimant

APPEAL NO. 19A-UI-02634-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 03/10/19
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Seventh Avenue (employer) appealed a representative's March 25, 2019, decision (reference 01) that concluded Dylan Finzel (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 April 16, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Teah Shirk, Employment Coordinator. Exhibit D-1 was received into evidence. 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 13, 2018, as a part-time pick pack. On March 11, 2019, the employer had no work for the claimant and laid him off. He filed a claim for unemployment insurance benefits with an effective date of March 10, 2019. The employer wrote in its online claim information form, "Not protesting, hours reduced due to lack of work."

On March 25, 2019, the claimant completed a Time off Request Form. He indicated he would be gone from March 25, 2019, until "Peak". The employer assumed this meant October. A box on the form was checked that read "More Than 90 Calendar Days" and "personal Business Lay-Off Request".

The employer does not know if it has work available. It did not attempt to contact the claimant to offer work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not working for the employer.

Iowa Admin. Code r. 871-24.23(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.

The claimant was hired as a part-time worker and is not still working for the employer. The employer had no work available for the claimant and removed him from the workforce. The change in hours was initiated by the employer. The claimant appears to be separated from employment.

The claimant is not able and available for work as of March 10, 2019.

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".

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 did not appear for the hearing and provide information about his employment. He has not met its burden of proof to show he is able and available for work. Benefits are denied.

The issues of the claimant's separation from employment and the overpayment of benefits are remanded for determination.

DECISION:

The representative's March 25, 2019, decision (reference 01) is reversed. There is no evidence to show the claimant is able and available for work. Benefits are denied. The issues of the claimant's separation from employment and the overpayment of benefits are remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs