

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFF L SCHWIENEBAUT**  
Claimant

**CENTRAL STATES ROOFING CO**  
Employer

**APPEAL 16A-UI-13558-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 14, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his availability for work. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2017. Claimant participated. Employer participated through president Mark Hanson.

**ISSUE:**

Is the claimant able to work and available for work effective November 27, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for employer as a commercial roofer. Claimant was paid \$15 per hour and typically worked an eight hour day.

On Monday, November 28 and Tuesday, November 29, 2016, claimant was absent from work for personal reasons relating to his vehicle.

On Wednesday, November 30, 2016, claimant was present for work. However, he was sent home as all of employer's available work had already been assigned to other employees.

On Thursday, December 1, 2016, claimant worked.

On Friday, December 2, 2016, claimant arrived over three hours late for work. Claimant overslept. When claimant arrived at work, he was terminated.

The agency determined claimant's December 2, 2016, separation from employment disqualifies him from receiving benefits. Claimant has elected not to appeal that decision. Claimant is seeking benefits for the one week ending December 3, 2016.

## 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 during the week ending December 3, 2016.

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 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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

In this case, claimant was not available for work during the week ending December 3, 2016, as he failed to work two and one-half days where work was available to him for personal reasons that cannot be attributed to employer. Had claimant worked the hours available to him, he would have earned \$405 during the week ending December 3, 2016, which exceeds the amount of wages which would qualify him as being partially unemployed. See Iowa Code § 96.19(38)a & b.

**DECISION:**

The December 14, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective November 27, 2016.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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