

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECIL C HENDRIX
Claimant

APPEAL NO. 12A-UI-02471-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLD MAN RIVER BREWING CO
Employer

OC: 01/01/12
Claimant: Appellant (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Cecil Hendrix, filed an appeal from a decision dated March 9, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 28, 2012. The claimant participated on his own behalf and with Darcy Barrett. The employer, Old Man River Brewing Company provided a telephone number to the Appeals Section. That number was dialed at 10:58 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the employer's participation unless a witness contacted the Appeals Section prior to the close of the record. By the time the record was closed at 11:09 a.m. the employer had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

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

FINDINGS OF FACT:

Cecil Hendrix began working for Old Man River Brewing Company in July 2011 as a full-time chef. He was promised 40 hours per week by General Manager Keya Bufahl. In January 2012 the business decreased because of seasonal factors and he was cut to 15 to 20 hours per week. He filed a claim for unemployment benefits with an effective date of January 1, 2012. He remains available for 40 hours per week any day of the week and any hours during the day.

REASONING AND CONCLUSIONS OF LAW:

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".

The claimant is able and available for work as he is working on a reduced-work week basis due to seasonal factors. The record establishes he is eligible for benefits and continues to report his weekly wages.

DECISION:

The representative's decision of March 9, 2012, reference 01, is reversed. Cecil Hendrix is able and available for work and is eligible for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs