

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL C MEISINGER
Claimant

APPEAL 18A-UI-04122-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 02/11/18
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 28, 2018, (reference 03) decision that denied benefits finding the claimant was not able to and available for work. After due notice was issued, a hearing was held by telephone conference call on April 25, 2018. Claimant participated.

ISSUE:

Is the claimant able to and available for work effective February 11, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for his last employer full time a traditional forty hour work week of daytime hours. He had not worked weekends and had not worked any twelve hours shifts. His employment was separated when the employer required him to move to rotating twelve hour shifts that would regularly include weekend work. The claimant was and is willing to work the regular daytime hours he had always worked and was willing to work occasionally on a weekend or later in the evening but did not want to move to a regular schedule of twelve hours per day with weekends. The claimant remains able to and available to work all of the hours he was working full time for his last employer in his base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective February 11, 2018.

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".

Iowa Admin. Code r. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

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 remains available to work all of the hours he normally worked in his last full time job during which his base period wages were earned. No evidence establishes that weekend or night time work is regularly required in his job. Claimant is not limiting his availability or placing undue restrictions on his employment by seeking to work full time during daytime hours. He is considered able to and available for work effective February 11, 2018. Accordingly, benefits are allowed effective February 11, 2018, provided the claimant is otherwise eligible.

DECISION:

The March 28, 2018, (reference 03) decision is reversed. The claimant is able to work and available for work effective February 11, 2018. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs