

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERNON S HAGANS
Claimant

JOES CRAB SHACK HOLDINGS INC
Employer

APPEAL 16A-UI-11035-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/11/16
Claimant: Respondent (3R)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 4, 2016 (reference 02) unemployment insurance decision that found claimant was able to and available for work due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2016. The claimant, Vernon S. Hagans, did not participate. The employer, Joe's Crab Shack Holdings Inc., participated through witness Allison Rifas. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits file including the fact finding documents.

ISSUES:

Is the claimant able to work and available for work?
Is claimant employed part-time for the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time for this employer. Claimant was separated from the employer in May of 2016. Claimant was then re-hired beginning in August of 2016 until claimant again was separated from employment. Claimant was a kitchen line cook and his working hours varied but he averaged 1-3 days per week. Claimant is no longer employed for this employer. Claimant was not on a short-term layoff.

Claimant has reported gross wages for the benefit week ending September 17, 2016. The claimant's unemployment benefits record establishes that he has reported he is able to and available for work for benefit weeks ending September 17, 2016 through October 22, 2016. He is listed as a work search group code 3 on his claim.

The Benefits Bureau of Iowa Workforce Development has not made an initial investigation and determination regarding claimant's two separations from employment from this employer. This matter shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination on these two separations and for redetermination for a different group code.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

According to the claimant's unemployment insurance benefits record he has reported that he is able to and available for work effective September 11, 2016. Claimant reported wages for the benefit week ending September 17, 2016 and no further wages have been reported.

Claimant is no longer employed for this employer. Claimant was not on a short-term layoff. The claimant is able to and available for work. The claimant is obligated to make at least two work searches during each week benefits are claimed effective immediately.

DECISION:

The October 4, 2016 (reference 02) decision is modified in favor of respondent. Claimant is not on short-term layoff and is not still employed with this employer. Claimant is able to and available for work effective September 11, 2016. Claimant is obligated to make at least two work searches during each week benefits are claimed effective immediately.

REMAND: The two instances where claimant was separated from employment with this employer as well as a redetermination of claimant's group code which are delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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