

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY R HEGER
Claimant

APPEAL NO. 12A-UI-09849-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOSSELMAN FOOD SERVICES INC
Employer

OC: 10/30/11
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 9, 2012, reference 01, that denied unemployment insurance benefits. After due notice was issued, an in-person hearing was held in Des Moines, Iowa on September 11, 2012. The claimant participated on his own behalf. The employer, Bosselman, was paged in the main waiting area at 11:14 a.m. No one responded and the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

The claimant, Larry Heger, was employed by Bosselman beginning June 6, 1997 as a part-time dishwasher. At the beginning of his employment he was working many hours a week but that was reduced in November of 2009 when Mr. Heger first filed for unemployment benefits. For the past three years he has been working an average of 12 hours per week. He filed his current claim October 30, 2011.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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 has been working an average of 12 hours per week for approximately three years. He remains as a part-time employee which is the status for which he was hired in June of 1997. As all of his base period wages were earned in these part-time hours of 12 per week he is not considered to be able and available for work under the provisions of the above Administrative Code section.

DECISION:

The representative's decision of August 9, 2012, reference 01, is affirmed. Larry Heger is ineligible for unemployment benefits as he not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

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