

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSE L OLVERA**  
Claimant

**STAFF MANAGEMENT SOLUTIONS LLC**  
Employer

**APPEAL 22A-UI-01260-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/31/21**  
**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On December 13, 2021, employer Staff Management Solutions, L.L.C., filed an appeal from the December 2, 2021 (reference 01) unemployment insurance decision that allowed benefits, finding the claimant was still employed and available for work. The parties were properly notified of the hearing. The parties agreed to waive notice on the issue of whether the claimant was able to work and available for work.

A telephonic hearing was held at 8:00 a.m. on Friday, February 4, 2022. The claimant, Jose L. Olvera, participated. Spanish/English interpreter Laura (ID number 14154) with CTS Language Link provided interpretation services for the hearing. The employer, Staff Management Solutions, L.L.C., participated through Susan Murphy, Senior Account Manager. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant able to and available for work effective October 31, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Staff Management Solutions, L.L.C., on February 15, 2019. He works full-time hours for the employer as a production worker. Claimant is still employed with the employer.

Claimant began working at the Oral-B jobsite in February 2021. When claimant started at Oral-B, he was assigned to the promo department. Later, he was also trained in and began working in the warehouse department. Claimant currently works at the Oral-B jobsite and moves between the warehouse and the promo departments, depending on what work is available.

When claimant reported to work on November 1, his supervisor sent him to the promo department to work. Claimant said he did not want to work in the promo department and he

want home. The following two days, November 2 and November 3, the same events occurred: claimant reported to work and, when directed to work in the promo department, he went home rather than work. On November 4 and November 5, claimant did not report to work at all and did not call the employer to let anyone know he would be absent. Claimant objected to working in the promo department because he earned over \$2.00 less per hour in that department than he earned when working in the warehouse department.

On Monday, November 8, Murphy contacted the claimant via telephone. Murphy informed him that if he was absent one more day without notice, his employment would end. Claimant reported to work that day and resumed working as scheduled.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work for the week ending November 6, 2021.

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(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(29) provides:

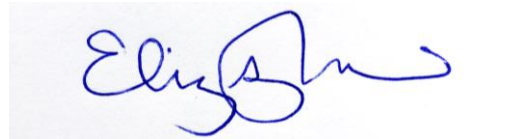
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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

In this case, the employer had work available for the week ending November 6, 2021. The administrative law judge understands, based on the testimony, that this was not work that the claimant wanted to perform. However, it appears to have been work he had performed before and work that fit within his job with the employer. Claimant disagreed with the difference in pay that he received, but this difference was not so substantial that it would have changed his contract of hire. The administrative law judge finds that claimant was unavailable for work for the week ending November 6, 2021. Benefits are withheld for that one-week period.

**DECISION:**

The December 2, 2021 (reference 01) unemployment insurance decision is reversed. The claimant was not available for work for the one-week period ending November 6, 2021. Benefits are withheld for that week.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 22, 2022  
Decision Dated and Mailed

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