

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ROBERT D JACOBSON**  
Claimant

**DAVE'S PLACE**  
Employer

**APPEAL NO. 14R-UI-12769-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/20/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

This matter comes before the Administrative Law Judge after a reversal and remand in claimant's case number 14A-UI-10657-B2-T. After due notice, a hearing was scheduled for and held on January 9, 2015. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As the claimant was the only participant in the hearing held on January 9, 2015, all additional findings of fact are gleaned from claimant's testimony. All findings of fact and exhibits from the hearing held on November 3, 2014 are hereby incorporated into the record.

The crux of claimant's testimony concerned claimant's belief that he was at all times under consideration in this matter available for work as a full-time worker. This has been claimant's argument throughout these hearings. In support of this argument, claimant states that he has recently obtained full-time work with River Hills Village, working in the same capacity as a CNA as he had worked for employer in this matter. This being in spite of the fact that claimant is carrying a full-time school load.

Claimant had previously been employed by employer and worked at or near 40 hours a week. These hours were drastically cut back by employer when claimant could not work his same schedule because of his schooling. But claimant remained able and available to work other schedules, as claimant's particular line of work – that of a CNA – necessarily involves needing 24-hour staffing of positions needed.

**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".

Iowa Admin. Code r. 871-24.22(2)f 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.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Iowa Admin. Code r. 871-24.23(5) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Inasmuch as claimant has continued to look for work in spite of his schooling schedule, the claimant has established the ability to work. Claimant has been able to not only look for full-time work while being a full-time student, claimant has shown that he is able to be both a full-time employee and a full-time student. Whereas the Code does not dictate that claimant must work the same schedule, but rather addresses the ability to be able and available to the same extent as during claimant's base period, claimant has established that ability. Benefits shall be allowed.

**DECISION:**

The decision of the representative dated December 11, 2014, reference 05 is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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