

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL B QUAIL
Claimant

APPEAL NO. 12A-UI-03780-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUAIL CONSTRUCTION LLC
Employer

OC: 02-26-12
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 5, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 21, 2012. The claimant did participate. The employer did participate through Joseph Quail, owner, and Ann Quail, operations manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Is the claimant able to and available for work effective February 26, 2012 through March 5, 2012?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a carpenter, full-time, beginning March 21, 2011, through March 5, 2012, when he was discharged. The claimant's separation from work is the subject of appeal number 12A-UI-04851-H2T. During the claimant's employment, he did not work all hours that were available to him due solely to his own actions. The claimant refused to work when Saturday work was available as is customary in the building trade, because he did not like some of the other employees who worked on Saturday. The claimant also missed work hours because during the last months of his employment, he chose to leave early six times, called in sick on six separate occasions, and chose to start work late each day so he could drop his child off at school. The employer never reduced the claimant's hours of work during his tenure of employment.

The claimant has not received any unemployment insurance benefits as a result of this claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

871 IAC 24.23(3) provides:

(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 § 96.4(3).

871 IAC 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 only reason the claimant was working less hours than were available to him was because he chose to work less hours. Accordingly, benefits are denied.

DECISION:

The April 5, 2012 (reference 01) decision is reversed. The claimant is not able to work and available for work effective February 26, 2012 through March 5, 2012. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw