

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRINITY K TOBY
Claimant

HICKLIN OVERHEAD DOORS INC
Employer

APPEAL 15A-UI-04502-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/08/15
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 14, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2015. Claimant participated. Employer participated through (representative) Tim Hicklin, Owner and Jake Falke, General Manager.

ISSUE:

Is the claimant able to and available for work and is he still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was originally hired to work full time in August 17, 2014 through January, 28 2015 when the claimant was separated. There has been no initial investigation and determination on the claimant's separation from this employer.

The claimant was hired to work full time. He asked for two weeks off at the end of December 2014 beginning of January 2015 to recover from a sinus infection and to allow him to learn to acclimate to a cold Iowa winter. When he returned to work the claimant specifically asked to be allowed to work only part time. The employer had full-time work available for the claimant but he wanted to work only part time. The claimant stopped showing up for work after January 29 and has since moved out of the state to California. The employer tried to contact the claimant after he stopped showing up for work, but they could not reach him. On one occasion they left a message with his girlfriend who answered his phone, but their message was not returned.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 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".

Iowa Admin. Code r. 871-24.23(16), (10) and (25) provide:

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.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant chose not to work full-time hours although full time was available to him. The claimant was on a period of leave of absences and has since moved out of state. Under these circumstances he is not considered able to and available for work. Accordingly, benefits are denied.

DECISION:

The April 4, 2014 (reference 02) decision is affirmed. The claimant is not able to work and available for work effective February 8, 2015. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css