

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DAVID L ELLERMAN**  
Claimant

**APPEAL 18A-UI-10836-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEVENTH AVENUE INC**  
Employer

**OC: 06/03/18  
Claimant: Appellant (1)**

---

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 25, 2018, (reference 03) unemployment insurance decision that denied benefits based upon a determination that he was unduly limiting his availability for work. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2018. Claimant participated and testified. Employer participated through Employment Coordinator Teah Shirk.

**ISSUE:**

Is the claimant able to work and available for work effective September 30, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is currently employed on a part-time basis for the employer, working from 6:00 a.m. to 2:00 p.m. on Mondays and Tuesdays. Claimant was a temporary full-time employee throughout his base period and until April 9, 2018, when he began working three days a week. Beginning April 23, 2018, claimant went down to two days a week. Claimant and the employer mutually agreed to reduce his work schedule to prevent claimant from earning enough wages annually to affect his social security benefits.

**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 effective September 30, 2018.

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".

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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 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.

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

Since claimant limited the number of hours he would work due to the receipt of Social Security benefits, and the employer is not obligated to provide a certain number of part-time hours, the reduction in wages is not attributable to the employer. Claimant is not considered available for work. Accordingly, benefits are denied.

**DECISION:**

The October 25, 2018, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective September 30, 2018. Benefits are withheld.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/scn