

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ISAAC H JONES**

Claimant

**APPEAL NO. 09A-UI-05253-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BELTMANN GROUP INC**

Employer

**Original Claim: 09-07-08**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 31, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on April 30, 2009. The claimant did participate. The employer did participate through Greg Berndt, Terminal Manager.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a lumber on call, part-time, beginning May 31, 2007, through date of hearing, as claimant remains employed. When hired, the claimant was not guaranteed any specific work shift or number of hours but was called on an as needed basis when work was available. If there was work available, it was offered to the claimant.

**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 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".

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

871 IAC 24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant was hired to work on call, part-time, when work was available. He knew when hired that there was no guarantee of any particular hours. Since he is an on-call, part-time worker working the same hours and schedule as when hired, he is not considered able to and available for work. Accordingly, benefits are denied.

#### **DECISION:**

The March 31, 2009, reference 03, decision is affirmed. The claimant is not able to work and available for work effective February 22, 2009. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw