

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNNIE E SAVAGE**  
Claimant

**APPEAL NO. 07A-UI-09589-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN-WALL GROUP**  
Employer

**OC: 09/09/07 R: 02  
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Johnnie Savage, filed an appeal from a decision dated October 10, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 29, 2007. The claimant participated on his own behalf. The employer, Van Wall Group, participated by Human Resources Manager Kathy Johnson and Service Manager Joel Huntrods.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Johnnie Savage began employment with Van Wall on March 29, 1999, as an on-call, as needed employee. His job is to pick up and deliver equipment for the dealership and there has never been any guarantee of a minimum number of hours per day or days per week. The amount of work available depends entirely on the work load of the employer. Service Manager Joel Huntrods, or another manager, will call him either the day of or the day before he is needed.

The claimant's last day of work was July 31, 2007, and no work has been available since that date.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The record establishes the claimant was hired from the beginning to be on-call, as needed, with no guarantee of a minimum number of hours per day or days per week. The manager would call him when he was needed; he was not scheduled in advance nor had regular work hours. He is still employed in this capacity; and under the provisions of the above Administrative Code section, is not able and available for work and ineligible to receive benefits.

**DECISION:**

The representative's decision of October 10, 2007, reference 01, is affirmed. Johnnie Savage is not eligible for unemployment benefits, as he is not able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw