

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN W SMITH
Claimant

APPEAL NO. 08A-UI-07219-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

OC: 06/08/08 R: 01
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, John Smith, filed an appeal from a decision dated August 8, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 25, 2008. The claimant participated on his own behalf. The employer, Webster City Custom Meats, participated by Vice President of Administration and Finance Connie Ingraham and Sales Secretary Diane Knudsen, and Vice President of Sales and Marketing Phil Voge. Exhibit One admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

John Smith was employed by Webster City Custom Meats beginning October 28, 1998 and is currently employed as a part-time driver. He was hired to be part time and not guaranteed any minimum number of hours or “runs” per week. Runs were distributed primarily to keep the employer’s full-time drivers working their guaranteed hours. If drivers were ill, on vacation, or more work came in, the extra runs would be offered to Mr. Smith.

The amount of work varied seasonally, and sometimes runs were abolished or the number reduced, because the employer no longer did business, or did a reduced amount of business, with that company.

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 claimant was hired part-time with no guarantee of a minimum number of hours or runs per week. He continues in that same capacity at the present time. Under the provisions of the above Administrative Code section, this means the claimant is ineligible for unemployment benefits as he is not able and available for work.

DECISION:

The representative's decision of August 8, 2008, reference 01, is affirmed. John Smith is ineligible to receive unemployment benefits as he is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

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