

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY L BANG**

Claimant

**APPEAL NO. 12A-UI-03472-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOJI BUILDERS**

Employer

**OC: 01/212/12**

**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Gary Bang, filed an appeal from a decision dated March 29, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 19, 2012. The claimant participated on his own behalf. The employer, Boji Builders, participated by President Lathe Toft.

**ISSUE:**

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

**FINDINGS OF FACT:**

Gary Bang was employed by Boji Builders beginning December 2, 2011. He is currently employed as a part-time, as-needed employee. He was hired part-time when there was plenty of work to do and he worked many 40-hour weeks as a result. As work got slower, and his skills turned out to be not up to the standard he had implied when he accepted the job, the available work for him began to decline. But, he is free to refuse an assignment if he has a conflict without jeopardizing his job.

**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 to be a part-time employee. The fact he may have worked full-time hours for a few weeks because the employee needed the help during that time does not mean the work was guaranteed full-time hours on a permanent basis. He is still employed part-time as needed. Under the provisions of the above Administrative Code section, the claimant is not able and available for work and is ineligible for benefits.

**DECISION:**

The representative's decision of March 29, 2012, reference 02, is affirmed. Gary Bang is not able and available for work and is ineligible for benefits.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw