

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN G MILLER JR
Claimant

APPEAL NO. 10A-UI-00791-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/18/09
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 12, 2010, reference 03, that concluded he was not available for work. A telephone hearing was held on February 27, 2010. The claimant participated in the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for Coventry Health Care of Iowa until October 20, 2008. His job required over 50 hours of work per week and paid a salary of \$80,000.00. He filed for benefits effective October 19, 2009, and his week benefit amount was determined to be \$389.00.

In March 2009, the claimant accepted a salaried position as a car salesperson at Anchor Motors. The job paid the claimant a salary of \$1,200.00 per month, plus a commission which was paid once a month. As a salaried position, the claimant's hours varied and he has no set schedule of work. The claimant considered the job as stop-gap employment until he could find suitable work. He consulted with his local Workforce Advisor and was assured that as long as he continued to look for suitable work and reported his wages, he would be eligible for benefits. The claimant reported his wages and continued to look for suitable work as he was instructed.

The claimant worked for Anchor Motors as described until December 31, 2009, when he accepted full time employment as a recruiter for Lincoln County of Technology. He had resigned from Anchor Motors effective January 5, 2010, but the Anchor Motors informed him that he was done at the end of the year.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The claimant was apparently disqualified based on Iowa rule 871 IAC 24.23(23), which provides that a claimant is unavailable where the claimant's availability for other work is unduly limited because the claimant is working to such a degree that he is removed from the labor market. The facts in this case do not support this conclusion as the job had no set hours, the salary was far lower than his previous job even with bonuses, the claimant continued to seek suitable work, and there is no evidence the job prevented the claimant from looking for other work.

The claimant is qualified to receive unemployment insurance benefits from March 9, 2009, though December 31, 2009, if he is otherwise eligible.

DECISION:

The unemployment insurance decision dated January 12, 2010, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits from March 9, 2009, though December 31, 2009, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs