

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARROLL HOWARD
Claimant

APPEAL NO: 13A-UI-11943-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 09/22/13
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 17, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 18, 2013. The claimant participated in the hearing. Sarah Fiedler, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time general laborer for Team Staffing Solutions last assigned to Young Brothers Stamp Works from August 22, 2011 to September 20, 2013. He completed the assignment.

The claimant was notified September 17, 2013, that his assignment was ending and he went to the employer's premises on that date to ask if the employer had any other part-time assignments available. The employer rarely offers part-time work and told the claimant it had none available.

The claimant is limited in his ability to stand for longer than four hours because of a bad back. He could work more hours if he had a position where he was allowed to sit down during part of his shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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 24.22(2) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

While the employer contends the claimant failed to check in for additional assignments upon the completion of his assignment, that requirement is in place to notify the temporary employment agency that an employee is able for work and available for work. In this case, the claimant went to the temporary employment agency the day he learned his assignment was ending, September 17, 2013, four days before the actual end date of September 20, 2013, to ask for another assignment. The claimant's actions satisfy the intent of the law in letting this employer know he was able and available for another assignment.

The claimant would like to work part time if he must stand to complete his work because of his back problems but has no medical restriction or other limitation on his employability. He has been a part-time employee for Team Staffing Solutions for just over two years and consequently is not unduly limiting his number of hours as he is able and available to work the same hours as he worked during his base period. Accordingly, benefits are allowed effective September 22, 2013.

DECISION:

The October 17, 2013, reference 01, decision is reversed. The claimant is able to work and available for work effective September 22, 2013. Benefits are allowed, provided the claimant is otherwise eligible to receive them.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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