

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT S WRIGHT
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 14A-UI-07614-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/22/14
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 16, 2014, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 14, 2014. Claimant participated personally. Employer participated by Sarah Fiedler.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired on June 9, 2014 for the position of baker through the employer. Claimant is still working in that position. From the first week that claimant began working in this job for employer he has not received full-time hours. Claimant states that he was told by both employer and the bakery for which he is working that he would receive full-time hours. Employer states that prior to claimant accepting his current position he was told by both employer and the bakery for which he works that he was hired as a part-time on-call worker, and that he was not guaranteed any hours. The administrative law judge finds the statements of employer as more credible.

Claimant is still working for the same company he was hired to work for, and is still working under the same terms and conditions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

Inasmuch as the claimant is still employed under the same hours and wages he was hired, and a condition of work is that he be ready to work when called in, the claimant has not established that he is able and available for work. Benefits are withheld.

DECISION:

The decision of the representative dated July 16, 2014, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css