

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES L EATON
Claimant

DALE HUMPAL
Employer

APPEAL 17A-UI-00633-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/16
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the January 12, 2017, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 9, 2017. Claimant did not participate. Employer participated through owner Mary Humpal.

ISSUE:

Is the claimant able to work and available for work effective December 18, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in April 2015. Claimant works for employer as a part-time farm hand.

Claimant was originally hired to milk cows. He also performed work outside. In February or March 2016, claimant told employer he did not want to work as many hours milking cows.

During the last two weeks of December 2016, employer had work available. However, the only work available was working double shifts milking cows. Claimant had already expressed he did not want to do this work. No outside work was available, so claimant did not work.

From January 1 through 7, 2017, claimant worked 25.25 hours and was paid \$10 per hour for his work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 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".

Iowa Admin. Code r. 871-24.23(18) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

Iowa Admin. Code r. 871-24.23(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.

In this case, claimant was not available for during the last two weeks of December 2016 because he unduly restricted his availability for work. Suitable work was available. Claimant chose not to perform the available work.

Claimant resumed working during the first week of January 2017, and worked the same amount of hours as contemplated in the original contract for hire. Therefore, claimant is not eligible for benefits effective January 1, 2017, because he is back at work.

DECISION:

The January 12, 2017, (reference 03) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective December 18, 2016. Benefits are denied.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

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