

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT S BOOS

Claimant

APPEAL NO. 10A-UI-03776-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP

Employer

OC: 01/24/10

Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Robert Boos, filed an appeal from a decision dated March 3, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 27, 2010. The claimant participated on his own behalf. The employer, Ruan Transport, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Robert Boos was employed by Ruan Transport beginning June 8, 2008 as a part-time over-the-road truck driver. At the time of hire he was told he would get “three to four loads per week” but there was no guarantee of a minimum amount of work. The loads available would vary depending on the amount of work and the number of drivers available to take the dispatch.

Mr. Boos filed a claim for unemployment benefits with an effective date of January 24, 2010 when the work became slower because new full-time drivers had been hired when the employer opened a new food distribution facility in Cedar Falls, Iowa.

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 as a part-time employee without any guarantee of a certain minimum number of dispatches in a given period. Due to the fluctuation in available work and re-distribution of loads due to the new facility, the amount of work offered to the claimant may have temporarily reduced. But as there was no minimum guarantee he cannot be considered to be able and available for work under the provisions of the above Administrative Code section.

DECISION:

The representative's decision of March 3, 2010, reference 01, is affirmed. Robert Boos is not eligible for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs