

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIGUEL RIOS
Claimant

TEAM STAFFING SOLUTIONS
Employer

APPEAL 17A-UI-01463-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/15/17
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the February 3, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2017. Claimant did not participate. Employer participated through Sarah Fiedler, Human Resources Generalist.

ISSUE:

Was the claimant partially unemployed and was he able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was assigned to work full time at All Steel as a temporary to hire employee beginning on September 19, 2016. The claimant filed a claim for benefits with an effective date of January 15, 2017. During the week ending January 21, 2017 the claimant worked 35.9 hours and was paid gross wages of \$451.09 hours. He only reported to the agency that he had earned \$394.00 dollars. During the week ending January 28, 2017 the claimant worked 35.8 hours and was paid gross wages of \$451.09. The claimant reported to the agency earnings of \$423.00 dollars. The claimant under reported his earnings to the agency. The claimant was hired by All Steel as a permanent employee beginning on January 28, 2017. The claimant worked over 35 hours each week he claimed benefits. The claimant was working full time hours when he claimed benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to 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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was working full time during each of the two weeks he claimed benefits. He also under reported his gross earnings to the agency. The claimant was working to the extent that he cannot be considered able to and available for work during the two weeks he claimed benefits as he was working over 35 hours for Team Staffing Solutions. Additionally, the claimant was not partially unemployed during each of those weeks as he worked over 35 hours each week. Accordingly, benefits are denied.

DECISION:

The February 3, 2017, (reference 01) decision is reversed. The claimant is not able to and available for work effective January 15, 2017. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs