

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER ODENDAHL
Claimant

APPEAL NO. 11A-UI-10409-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GRANITE CITY
RESTAURANT OPERATIONS**
Employer

OC: 03/20/11
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 29, 2011 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 30, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant is able to and available for work effective March 20, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant kitchen manager and was separated from employment on March 17, 2011. That separation has been resolved at the appeals level. He and other business partners/investors opened a restaurant. He developed the restaurant concept, designed the menus and interior, and works on spreadsheets at home. The restaurant has a general manager to run day-to-day operations. He is able to determine how many or few hours he devotes to his partial ownership in this restaurant and is seeking full-time work. He is helping out this weekend, but is otherwise not working on a regular basis in or for this restaurant.

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.

Since claimant is not involved in the restaurant on a regular basis and is seeking other full-time work, he has no limitation on his employability effective March 20, 2011. Accordingly, benefits are allowed.

DECISION:

The July 29, 2011 (reference 02) decision is reversed. The claimant is able to work and available for work effective March 20, 2011. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw