

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL S HASTAD
Claimant

APPEAL NO. 10A-UI-13877-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PIZZA HUT
COMES INVESTMENTS INC**
Employer

**OC: 08-29-10
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 1, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on November 16, 2010. The claimant did participate. The employer did participate through Carmen Bellon, Manager.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's employment ended on August 23, 2010. No fact-finding decision has been issued on whether his separation from this employer was disqualifying for the purposes of unemployment insurance benefits. He began working full time for another employer on September 13, 2010. Since he is now working full time for another employer he is not able to and available for work effective September 13, 2010. The claimant did not work for any employer for the weeks ending September 4, 2010 or September 11, 2010.

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 effective September 13, 2010.

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".

871 IAC 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 is not able to and available for work effective September 13, 2010 because he is working full time for another employer. Accordingly, benefits are denied effective September 13, 2010.

REMAND:

The separation issue delineated in the findings of fact is remanded for a fact-finding decision on whether the claimant's separation from this employer allows him to receive unemployment insurance benefits for the period from August 23, 2010 to September 13, 2010.

DECISION:

The October 1, 2010, reference 04, decision is affirmed. The claimant is not able to work and available for work effective September 13, 2010. Benefits are denied effective September 13, 2010.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs