

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADRIANA ESPINOZA**  
Claimant

**APPEAL NO. 13A-UI-01974-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AXCESS STAFFING SERVICES**  
Employer

**OC: 01/06/13**  
**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Adriana Espinoza, filed an appeal from a decision dated February 14, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 19, 2013. The claimant participated on her own behalf. The employer, Axxcess Staffing, participated by On-Site Manager Dennis Panosh and was represented by TALX in the person of Lesley Buhler.

**ISSUE:**

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

**FINDINGS OF FACT:**

Adriana Espinoza was employed by Axxcess beginning September 28, 2009. She was assigned to Rock Tenn but would have to show up every day and wait to be called to work the shift. In January 2013 she worked only six days although there was plenty of work for all who appeared.

**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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant maintained her name was not called even though she was on the list every day. But the on-site supervisor stated there was a lot of work and everyone who signed up each day was put to work. The claimant did not make herself available to work except for six days in January 2013. Under the provisions of the above Administrative Code section, she is not able and available for work and ineligible for unemployment benefits.

**DECISION:**

The representative's decision of February 14, 2013, reference 01, is affirmed. Adriana Espinoza is not eligible for unemployment benefits as she is not able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css