

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY J PARIS
Claimant

APPEAL NO. 14A-UI-01408-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIES TRUCKING
Employer

OC: 12/22/13
Claimant: Respondent (2/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Ries Trucking (employer) appealed a representative's February 3, 2014, decision (reference 04) that concluded Jeremy Paris (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2014. The claimant participated personally. The employer participated by Jennifer Ries, Co-Owner.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 31, 2012, as a part-time semi-truck driver. At the time he was hired, the claimant told the employer that he was self-employed with a pig operation but he would help the employer when he was free. The claimant also worked for Kirkwood Community College.

The employer refused to pay the claimant his wages after May 31, 2013, and the claimant would not perform any more services for the employer until he was paid the wages he was due. There was a dispute over property damage. In October or November 2013, the employer paid the claimant his wages from May 2013. The employer did not offer him any more work.

On December 13, 2013, the claimant was charged with operating a motor vehicle while intoxicated (OWI) and his license was taken from him. Without his license, he could not work for the employer. On December 22, 2013, the claimant was separated from employment with Kirkwood Community College.

The claimant filed for unemployment insurance benefits with an effective date of December 22, 2013. The claimant's base period of employment is the third quarter of 2012 through the second quarter of 2013. Besides the employer's wages, the claimant has full-time wages from Volkens Excavating in the third quarter of 2012. He has no other wages in his base period.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is disqualified from receiving unemployment insurance benefits because he is not available for work after December 22, 2013.

871 IAC 24.23(7), (29) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

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

When an employee is devoting time and effort to being self-employed, he is considered to be unavailable for work. Likewise, when an employee fails to work the major portion of the scheduled workweek for his regular employer, he is considered to be unavailable for work. The claimant was devoting his time and efforts to his pigs. In addition, he could not work a major portion of his workweek for this employer because of his OWI. He is considered to be unavailable for work after December 22, 2013. The claimant is disqualified from receiving unemployment insurance benefits beginning December 22, 2013, due to his unavailability for work.

The issue of the separation of employment is remanded for determination.

DECISION:

The representative's February 3, 2014, decision (reference 04) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work after December 22, 2013. The issue of the separation of employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs