

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRENCE JOHNSON
Claimant

APPEAL NO: 10A-UI-06523-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

OC: 06/28/09
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Terrence Johnson (claimant) appealed an unemployment insurance decision dated April 23, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was unduly limiting his availability for work with Exide Technologies (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 22, 2010. The claimant participated in the hearing. The employer participated through Tim Guyer, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to 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 as a full-time forklift operator on May 8, 1989 and he is currently working as heat seal operator. The employer did not need all its employees to work on March 25, 2010 and March 26, 2010 but employees could work if they wanted to work. The claimant elected not to work because he did not have to work.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able 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

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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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The evidence shows that the claimant did not have to work but work was available and he could have worked. Consequently, he does not meet the availability requirements of the law for the week ending March 27, 2010.

DECISION:

The unemployment insurance decision dated April 23, 2010, reference 01, is affirmed. The claimant is not eligible to receive benefits for the week ending March 27, 2010.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs