

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN JONES
Claimant

APPEAL NO: 10A-UI-07638-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

VIP MANAGEMENT LLC
Employer

OC: 03/29/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Brian Jones (claimant) appealed an unemployment insurance decision dated May 13, 2010, reference 04, which held that he was not eligible for unemployment insurance benefits as of November 15, 2009 because he is devoting his time and efforts to becoming self-employed. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on July 21, 2010. The claimant participated in the hearing but the employer failed to participate. Based on the evidence, the arguments of the party, 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's availability is limited due to his efforts at becoming self-employed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant is working as an independent contractor so that he can earn some extra money before finding a job. However, he is not devoting so much time and effort to his self-employment that he is unable to look for work and be available for work when an opportunity presents itself.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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(7) 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.

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 claimant presented credible evidence that he is not devoting his time and effort to becoming self-employed, even though he is doing some contract work. Consequently, the claimant meets the availability requirements of the law and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 13, 2010, reference 04, is reversed. The claimant does meet the availability requirements of the law and benefits are allowed.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css