

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BERNARD ALLASSOUMA**  
Claimant

**AVENTURE STAFFING & PROFESSIONAL**  
Employer

**APPEAL 19A-UI-08059-SC**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/30/19  
Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On October 16, 2019, Bernard Allassouma (claimant) filed an appeal from the October 8, 2019, reference 03, unemployment insurance decision that denied benefits effective September 8, 2019 based on the determination he is not willing to work the number of hours required in his occupation and is not available for work. After due notice was issued, a hearing was held in Sioux City, Iowa on November 1, 2019 at 1:00 p.m. The claimant participated personally. Adventure Staffing & Professional (employer) participated through Toni Holguin, HR Specialist, and Dina Morales, Employment Specialist. The Employer's Exhibit 1 was admitted into the record over the claimant's objections on the basis of relevance and hearsay.

**ISSUE:**

Is the claimant able to work, available for work, and actively and earnestly seeking work the week effective September 8, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for unemployment insurance benefits effective June 30, 2019. The claimant's base period includes full-time employment with Seaboard Triumph Foods, overlapping part-time employment with Woodbury County Courthouse, and on-call employment during the final quarter with the employer.

The claimant continues to work for the employer's client Steck earning \$10.00 an hour. Steck will place an order each week with the employer for a varying number of shifts and employees. The employees who work for Steck through the employer will call in each week to find out what shifts and times are available and can accept or decline the work.

On September 12, the employer contacted the claimant and offered him an assignment with American Popcorn for 52 hours a week earning \$10.00 an hour. The claimant initially accepted the offer; but, the following day declined the new assignment and requested to continue working for Steck because he did not want to work that many hours each week. He did not want to work

that many hours due to back pain; however, he is not currently restricted in his ability to work by his doctor.

On October 17, the claimant contacted the employer seeking work with Steck. He explained he was only supposed to work three days a week. The employer explained Steck wanted someone to work four shifts and the claimant said he would work when he wanted to work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not available for work effective September 8, 2019. Benefits are denied.

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".

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable

expectation of securing employment, then the individual meets the requirement of being available for work.

...

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

...

(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.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age,

intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The claimant provided some contradictory testimony and was evasive in answering some of the questions asked. The employer provided documents maintained in the normal course of business and created at the time of the event.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant's base period includes full-time wages. The claimant refused full-time work, electing instead to remain an on-call employee for the employer's client Steck. The claimant is not making himself available for employment on the same basis he was employed during his base period and is limiting his employment to an on-call assignment with one client. The claimant has not established that he is genuinely attached to the labor market and available for work. Accordingly, he is not eligible for unemployment insurance benefits. Benefits are denied.

**DECISION:**

The October 8, 2019, reference 03, unemployment insurance decision is affirmed. The claimant is not available for work effective September 8, 2019. Benefits are denied.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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