

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NOAH L JUENGER**

Claimant

**APPEAL NO. 07A-UI-04167-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAGUIRE IRON INC/WATETOWER  
PAINT & REPAIR A DIVISION, MAGUIRE  
IRON INC**

Employer

**OC: 11/19/06 R: 02  
Claimant: Appellant (2)**

Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Noah Juenger filed a timely appeal from the April 16, 2007, reference 01, decision that denied benefits for the benefit week ended March 24, 2007. After due notice was issued, a hearing was held on May 9, 2007. Mr. Juenger participated and presented additional testimony through Donny Juenger, Painting Foreman. Larry Nierengarten, Human Resources and Safety Director, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 07A-UI- 04168-JTT.

**ISSUES:**

Whether the claimant fulfilled the able and available for work requirements set out in Iowa Code section 96.4 (3) during the benefit week that ended March 24, 2007.

Whether the claimant was temporarily unemployed or partially unemployed during the benefit week that ended March 24, 2007 and, therefore, exempt from the able and available work provisions set out in Iowa Code section 96.4 (3).

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Noah Juenger commenced his full time employment with Maguire Iron Inc./Watertower Paint & Repair on March 3, 2005 and continues in that employment. The claimant's brother, Field Painting Foreman Donny Juenger, is the claimant's immediate supervisor. During the benefit week that ended March 24, 2007, Donny Juenger was off work pursuant to a scheduled vacation. The employer had no field painting work for Noah Juenger during that week. When there was no work in the field, the employer would sometimes put the claimant to work at the employer's warehouse. Ken Bartling was the warehouse foreman. During the week in question, Mr. Bartling told Mr. Juenger that there is no work for him in the warehouse and that he did not need to come to work that week. Noah Juenger was unaware that the employer had any other work for him to do during the week in question. Mr. Juenger relied upon Mr. Bartling's statement, which Mr. Bartling had represented was based on the authority of Vice President Scott Jones, in concluding that he was temporarily laid off for the week.

**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".

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b). An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The evidence in the record establishes that Mr. Juenger was temporarily unemployed during the benefit week that ended March 24, 2007 and, therefore, was not subject to the able and available for work requirements set forth in Iowa Code section 96.4 (3). Mr. Juenger is eligible for benefits for the week ended March 24, 2007, provided he is otherwise eligible.

**DECISION:**

The Agency representative's April 16, 2007, reference 01, decision is reversed. The claimant was temporarily unemployed during the benefit week that ended March 24, 2007 and, therefore, was not subject to the able and available for work requirements set forth in Iowa Code section 96.4 (3). The claimant is eligible for benefits for the week ended March 24, 2007, provided he is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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