

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

EARL K GRAGG
613 – 2ND ST
PO BOX 131
LORIMOR IA 50149

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

AMENDED

Appeal Number: 05A-UI-03476-LT
OC: 09-19-04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 30, 2005, reference 03, decision that benefits are denied for the four weeks through March 12, 2005. After due notice was issued, a hearing was held on April 21, 2005. Claimant did participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time at Kraft Foods as assigned via Kelly Services through April 12, 2005. Claimant had been off work from February 2 through February 11, 2005 due to a respiratory illness and did not file a claim for benefits that week. Claimant's treating physician released him to return to work on February 12 and Kelly Services told him there was no longer work available

for him at Kraft and there were no other assignments available. Claimant was fully unemployed until he started his part-time job at Dollar General on April 11, 2005. Claimant is continuing to seek full-time work and has been instructed to file weekly claims and report his earnings with Dollar General each week that he is partially unemployed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective February 12, 2005.

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".

871 IAC 24.22(2) provides:

Benefits 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.

Claimant was released to return to work on February 12, 2005 but no work was available. Accordingly, full benefits are allowed effective February 13, 2005 through April 9, 2005. As of the week beginning April 10, 2005, claimant is eligible for partial unemployment benefits depending upon reported weekly earnings with Dollar General.

DECISION:

The March 30, 2005, reference 03, decision is reversed. The claimant is able to work and available for work effective February 13, 2005. Benefits are allowed, provided the claimant is otherwise eligible.

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