

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM P SHIPLEY
Claimant

APPEAL NO. 08A-UI-00528-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARTLAND LLC
Employer

OC: 12/16/07 R: 04
Claimant: Respondent (1)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Temps Now Heartland, L.L.C., filed a timely appeal from the January 11, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on January 30, 2008. Claimant William Shipley participated and presented additional testimony through his spouse, Louise Shipley. Laura Gawronksi of Personnel Planners, Inc., represented the employer and presented testimony through Shae Munson, Senior Recruiter for Temps Now Heartland, Inc.

ISSUE:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Shipley established his employment relationship with Temps Now Heartland on April 23, 2007 and has worked in five temporary employment assignments. From May 29, 2007 to June 19, 2007, Mr. Shipley worked at Ketchup Logistics, where he packaged empty ketchup bottles. The assignment ended when all of the packaging work had been completed. From August 3, 2007 to August 27, 2007, Mr. Shipley worked at RR Donnelly printing company, where he performed bindery and/or “pick and pack” duties. The assignment ended when RR Donnelly no longer needed Mr. Shipley because production had slowed in the assigned work area.

Within a few days after the end of the RR Donnelly assignment, Mr. Shipley commenced an assignment at Norcross Safety Products, where he unpacked cases of boots, priced or tagged boots, and restacked boxes of boots. Mr. Shipley was also put to work unloading semi tractor trailers. The work duty information Norcross Safety Products provided to Temps Now Heartland indicates a lifting requirement of 20-30 pounds. Mr. Shipley has been diagnosed with emphysema and chronic obstructive pulmonary disease (COPD). Mr. Shipley uses an inhaler. Mr. Shipley has been prescribed 24-hour use of bottled oxygen, but utilizes the oxygen only at home at night. Mr. Shipley does not take bottled oxygen with him to work. Because of Mr. Shipley’s lung disease, he cannot perform heavy lifting or work in a dusty environment.

Mr. Shipley continued in the Norcross assignment from the beginning of September until the end of November. On or about November 28, Mr. Shipley's wife notified Temps Now that Mr. Shipley could not continue to perform the duties at Norcross due to his lung disease. Mr. Shipley's assignment at Norcross ended on November 28.

On December 7, Mr. Shipley returned to Ketchup Logistics for a new assignment. The employees that Temps Now Heartland sends to Ketchup Logistics generally perform work for a few weeks until the packaging work is complete, are laid off at the end of the assignment, and return for a new assignment within a few weeks, when new packaging materials arrive. On December 20, 2007, Mr. Shipley was laid off from the assignment at Ketchup Logistics. Mr. Shipley's work at Ketchup Logistics was supervised by another Temps Now Heartland employee, Line Leader Christie Davis. Ms. Davis only works for Temps Now Heartland when Ketchup Logistics has work. Ms. Davis is the person who notified Mr. Shipley of the December 20 layoff. On January 7, Mr. Shipley returned to Ketchup Logistics for yet another assignment, which lasted until January 24, 2008, when Mr. Shipley was again laid off. Mr. Shipley did not look for other employment between December 20 and his next contact with Temps Now Heartland on January 2 or 3.

Aside from the breathing and lifting issues that prompted Mr. Shipley's departure from the Norcross assignment, Mr. Shipley was able to perform the duties assigned to him by Temps Now Heartland or its business clients.

Mr. Shipley established a claim for unemployment insurance benefits that was effective December 16, 2007. Mr. Shipley's weekly benefit amount has been set at \$150.00. For the benefit week that ended December 22, Mr. Shipley reported wages of \$208.00 and received no unemployment insurance benefits. For the benefit weeks that ended December 29, 2007 and January 5, 2008, Mr. Shipley reported no wages and received weekly benefits of \$150.00.

Temps Now Heartland lacks a policy that would require Mr. Shipley to notify the temporary employment agency within a certain number of workdays after the end of an assignment.

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".

871 IAC 24.22(1)a, (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

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 and will again work, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The greater weight of the evidence in the record establishes that Mr. Shipley is able to engage in gainful employment. The evidence indicates that Mr. Shipley has completed all but one assignment in which Temps Now Heartland has placed him. In the one assignment Mr. Shipley eventually concluded he was unable to perform, Mr. Shipley actually performed the work for approximately three months before requesting to be removed due to the impact on his health. The evidence indicates that this voluntary separation from an assignment predated Mr. Shipley's claim for unemployment insurance benefits and that Mr. Shipley has since completed two additional assignments with Temps Now Heartland. Despite Mr. Shipley's medical condition, he is able to work.

The greater weight of the evidence indicates that the period of December 20, 2007 through January 5, 2008 was a period of temporary unemployment, when Mr. Shipley was between two assignments with the same client business. During the period of temporary unemployment, Mr. Shipley was exempt from the work availability requirements set forth in Iowa Code section 96.4(3). Mr. Shipley is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's January 11, 2008, reference 02, decision is affirmed. The claimant has met the able to work and available for work requirement of Iowa Code section 96.4(3) since establishing his claim for benefits. The claimant is eligible for benefits, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw