

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM P SHIPLEY
Claimant

APPEAL NO. 08A-UI-02640-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARTLAND LLC
Employer

OC: 12/16/07 R: 04
Claimant: Respondent (4)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On March 18, 2008, Temps Now Heartland, L.L.C. filed a timely appeal from the March 11, 2008, reference 04, decision that allowed benefits beginning January 27, 2008. After due notice was issued, a hearing was held on March 31, 2008. Claimant William Shipley participated and provided additional testimony through his spouse, Louise Shipley. Laura Gawronski of Personnel Planners represented the employer and presented testimony through Shae Munson, Senior Recruiter. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the Agency's administrative record of the decision entered in Appeal Number 08A-UI-00528-JTT and the Employment Appeal Board's affirmance in Hearing Number 08B-UI-00528.

ISSUE:

Whether William Shipley has been able to work and available for work since January 31, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Shipley established a claim for unemployment insurance benefits that was effective December 16, 2007. On January 30, 2008, these same parties and witnesses appeared for an appeal hearing in Appeal Number 08A-UI-00528-JTT. The issue then, as the issue now, was whether Mr. Shipley met the able to work and availability for work requirements set forth in Iowa Code section 96.4(3). Though Mr. Shipley suffers from chronic disease, the administrative law judge concluded that Mr. Shipley had sufficiently demonstrated his ability to work to satisfy the work ability requirements of Iowa Code section 96.4(3). In addition, the administrative law judge concluded that during the period of December 20, 2007 through January 5, 2008, Mr. Shipley was temporarily unemployed because he was between two assignments with the same client business. The administrative law judge heard evidence regarding Mr. Shipley's work availability up to the date of the January 30, 2008 hearing and concluded that Mr. Shipley was able and available to work and eligible for unemployment insurance benefits, provided he was otherwise eligible. The administrative law judge entered a written decision on February 5, 2008, which decision was affirmed by the Employment Appeal Board on March 25, 2008. The employer has not appealed the decision of the Employment Appeal Board. The decision of the administrative

law judge and the affirming decision of the Employment Appeal Board are binding on these parties. Accordingly, the present hearing and decision address Mr. Shipley's ability to work and availability for work since January 31, 2008, the day after the previous appeal hearing dealing with the same issue.

Since January 31, 2008, Mr. Shipley's health has continued unchanged. Mr. Shipley is able to engage in gainful employment, but must avoid strenuous physical labor and/or dusty work environments.

Since January 31, 2008, Temps Now Heartland has had no further contact with Mr. Shipley and has offered Mr. Shipley no additional work assignments.

Since January 31, 2008, Mr. Shipley has had no documented in-person employer contacts. Mr. Shipley has looked on the Internet for new employment and has made casual inquiries regarding new employment when he has been out and about on personal errands. Mr. Shipley had not documented any of his work search efforts. Mr. Shipley lacks a valid driver's license and relies upon his spouse for transportation. Mrs. Shipley receives disability benefits, does not work, and is available to transport Mr. Shipley as needed. The Shipleys cite the price of gas and the poor condition of their truck as the reasons why Mr. Shipley had not made additional in-person inquiries about new employment.

Iowa Workforce Development currently has Mr. Shipley coded as a "group 3" claimant, or a job-attached, but temporarily unemployed claimant.

REASONING AND CONCLUSIONS OF LAW:

In analyzing the evidence and reaching a conclusion regarding Mr. Shipley's eligibility for unemployment insurance benefits, the administrative law judge must consider a number of factors. Included in the factors the administrative law judge must consider are the proceedings in Appeal Number 08A-UI-00528-JTT. The decision entered in that matter continues to be binding upon the parties. See Iowa Code section 96.6(4). The administrative law judge must consider the extent to which Mr. Shipley has reasonably relied upon the decision entered on February 5, 2008 in Appeal Number 08A-UI-00528-JTT, which decision exempted him from the work search requirement so long as he continued on "temporarily unemployed" status. The administrative law judge must consider the extent to which the employer may be attempting to make an end-run around the prior decision after its unsuccessful appeal of that decision. It is easy for an employer to manipulate and end to a "temporarily unemployed" status situation by proclaiming it does not intend to recall the employee. Finally, in analyzing the evidence and reaching a conclusion regarding Mr. Shipley's eligibility for unemployment insurance benefits, the administrative law judge must consider the main purpose of the Employment Security Act, which is to provide subsistence income to persons unemployed through no fault of their own. See Iowa Code section 96.2.

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 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 indicates that Mr. Shipley continues to be able to work in some gainful employment, regardless of whether that gainful employment is a particular assignment with Temps Now Heartland, L.L.C. Mr. Shipley satisfies the work ability requirement of Iowa Code section 96.4(3).

The weight of the evidence indicates that Mr. Shipley is no longer temporarily unemployed from his prior assignment at Temps Now Heartland, L.L.C. The evidence indicates that Mr. Shipley has up to this point reasonably relied upon the administrative law judge's decision in Appeal Number 08A-UI-00528-JTT. That decision concluded that Mr. Shipley was "temporarily unemployed." In reasonable reliance on that decision, Mr. Shipley has limited his search for new employment.

Effective during the upcoming benefit week that will start on Sunday, April 6, 2008, Mr. Shipley is no longer deemed temporarily unemployed from Temps Now Heartland, L.L.C. and is, therefore, subject to the availability and work search requirements of Iowa Code section 96.4(3). Mr. Shipley shall be recategorized as a "group 2" claimant. See 871 IAC 24.2(1)(c)(3). Mr. Shipley will be required to conduct an active and earnest search for new employment and to do so by means of in-person job contacts. Mr. Shipley has a duty to document any and all job contacts and to be prepared to provide such documentation to Iowa Workforce Development upon request. If Mr. Shipley relies upon the price of gas or the condition of his vehicle as excuses for not conducting an active and earnest search for new employment, this may subsequently prevent Mr. Shipley from being eligible for unemployment benefits.

DECISION:

The Agency representative's March 11, 2008, reference 04, is modified as follows. Through the benefit week that will end April 5, 2008, the claimant will continue to be deemed temporarily unemployed and exempt from the availability requirements of Iowa Code section 96.4(3). Effective April 6, 2008, the claimant will no longer be deemed temporarily unemployed and will be subject to availability and work search requirements of Iowa Code section 96.4(3). The claimant continues to be able to work. The Claims Division shall reclassify the claimant as a "group 2" claimant. The claimant continues to be eligible for unemployment insurance benefits, providing he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs