

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD D KELLOGG
Claimant

APPEAL NO: 07A-UI-00047-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOUGLAS LIDA, CRAIG LIDA
LIDA PROPERTIES LLP OF IOWA
Employer

OC: 11-26-06 R: 02
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 20, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 18, 2007. Claimant participated. Employer participated through Nikki Baur, regional manager.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time combined security, grounds keeping and maintenance worker for three years until November 30, 2006 when he quit after Sherry Shelton, on-site manager, gave notice on November 17 that effective December 1, 2006 it would reduce its contribution to rent from \$785 to \$400 and removed all other duties except snow removal because of a business decision. The last day claimant performed work duties was November 17.

Claimant was able and available to work his regular hours and work duties for the period from November 26, 2006 to December 2, 2006 but was scheduled to work fewer hours than regularly scheduled in the past. Claimant reported gross wages each week in which they were earned since filing his claim with an effective date of November 26, 2006.

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.

Iowa Code § 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".

It was employer that removed work duties after November 17 because of a business decision and not because claimant made himself unavailable for work. He was able to and available for work effective November 26, 2006. Since there is no evidence of a timesheet or work duties performed after November 17, 2006 and there was no snow to remove in December, which was the only duty employer had not removed, no wages were earned in December. Accordingly, benefits are allowed.

DECISION:

The December 20, 2006, reference 01, decision is reversed. The claimant is able to work and available for work effective November 26, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs