

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICK PICKERING**  
Claimant

**APPEAL NO: 07A-UI-09104-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHELTON TRUCKING**  
Employer

**OC: 08/19/07 R: 02**  
**Claimant: Appellant (1/R)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Nick Pickering (claimant) appealed an unemployment insurance decision dated September 19, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits as he does not meet the availability requirements of the law. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2007. The claimant participated in the hearing. The employer participated through Wanda and Donald Shelton. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's last day of work was August 15, 2007 and the employer contacted him on August 16, 2007 to return its tractor/trailer. He said he could not return the semi truck because he was visiting his brother in Ames, Iowa. The employer asked the claimant if he was quitting and he said he did not know when he would be returning. The claimant failed to return the truck so the employer went to his home on August 26, 2007 to retrieve it. The employer did not see or hear from the claimant until October 3, 2007 when he showed up at work to retrieve his paycheck.

The claimant has permanently separated from this employer but the separation issues have not yet been litigated.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

871 IAC 24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant left town after his last work day on August 15, 2007. He told the employer he was out of town visiting his brother before his brother joined the US Army. He did not return to work to retrieve his paycheck until October 3, 2007. Although he claims he was only out of town for two days, the preponderance of the evidence suggests he was out of town until October 3, 2007 when he retrieved his last paycheck. The claimant does not meet the availability requirements of the law from August 19, 2007 through October 6, 2007 and benefits are denied during that time.

There has not been a determination made with regard to the claimant's separation from this employer and the case will be remanded for that purpose.

**DECISION:**

The unemployment insurance decision dated September 19, 2007, reference 02, is affirmed. The claimant is not eligible for unemployment insurance benefits from August 19, 2007 through October 6, 2007 because he was not available for work. This case is remanded for further determination.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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