

**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**

**DAVID D VANVARK  
PO BOX 145  
KNOXVILLE IA 50138**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 04A-UI-03244-BT  
OC: 11/09/03 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

David Vanvark (claimant) appealed an unemployment insurance decision dated March 17, 2004, reference 05, which held that he was not eligible for unemployment insurance benefits because he was not able and available to work as of November 19, 2003. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on April 6, 2004. The claimant participated in the hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was on a temporary layoff from November 9, 2003 through January 31, 2004, with the exception of four weeks. He was able and available for work during that time frame.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able and available for work. 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).

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".

The claimant's employer placed him on a temporary layoff as of November 9, 2003. The claimant testified he was able and available for work during that temporary layoff and his testimony is found credible. Further evidence of his availability is the fact that he worked for the employer in December 2003 and January 2004. The claimant has established his availability to work and is qualified for benefits, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated March 17, 2004, reference 05, is reversed. The claimant was able and available for work as of November 9, 2003 and is qualified for benefits provided he is otherwise eligible.

sdb/kjf