

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMONTEZ HAWKINS**  
Claimant

**APPEAL NO: 10A-UI-02553-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREG'S LAWN SERVICE INC**  
Employer

**OC: 11/29/09**  
**Claimant: Respondent (1)**

Section 96.4-3 – Availability for Work

**STATEMENT OF THE CASE:**

The employer appealed a representative's February 12, 2010 decision (reference 09) that concluded the claimant was eligible to receive benefits as of November 29, 2009, because he was able to and available for work. A telephone hearing was held on March 29, 2010. The claimant participated in the hearing with his witness, Brianna Hawkins. Greg Scharf, the president, and Breanne Ripperger, a landscape designer and snow removal dispatcher, appeared on the employer's behalf. 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:**

As of November 29, 2009, is the claimant able to and available for work?

**FINDINGS OF FACT:**

On October 23, 2009, the employer hired the claimant to work as a temporary seasonal employee to work as an on-call snow removal employee. Since the claimant had irrigation experience, the employer had him work on a last-minute irrigation project. The employer had hired the claimant to supervise a snow removal team, which required him to drive. Later, the employer learned its insurance company would not insure the claimant. This meant the claimant could not drive the employer's equipment or supervise a team. This left the claimant shoveling snow.

The employer has a computerized calling system to call over 200 employees, regular and temporary, when the employer has jobs to remove snow. The claimant initially gave the employer a cell phone number to contact him.

In late November or early December 2009, the claimant informed Ripperger he would not be available to work Friday 6:00 p.m. to Sunday 6:00 p.m. for four consecutive weekends starting December 11, 2009. The claimant understood this would not be a problem since he gave the employer advance notice of the times he could not work.

The employer called the claimant to remove snow on December 7, 8 and 9 and he worked these days. In mid-December the claimant gave Ripperger a new phone number to contact him, his home phone number, and asked the employer to call him at this number when there was work. The employer tried contacting the claimant at various times in December to work removing snow. The employer's automated system called both phone numbers the claimant had provided. One time, on a Sunday when the claimant called the employer about doing work, he had just been released from jail and learned there was no more work for him to do that day. Another time, the claimant went to the work but was told to wait to see if there was a need for another snow shoveler. After waiting for someone to pick him to work and no one did, the claimant left without working. There were times when the employer called the claimant and he was not at home because he was looking for work. When the claimant did not work after December 9 and the employer had repeated problems contacting him to work, the employer removed the claimant's phone number from the computerized calling system in early January 2010.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. The fact the employer hired the claimant to work as an on-call seasonal snow removal employee, does not affect the claimant's availability for work because this was an on-call, as-needed temporary job. When hiring the claimant, the employer informed him he must be available to work 24 hours a day, seven days a week. It was not until late November or early December the claimant learned he had to spend four consecutive weekends in jail. He immediately informed Ripperger about this. He understood that because he informed the employer in advance, the fact he was not available to work some weekend would not be a problem since the claimant was an on-call, as-needed temporary employee.

The fact the claimant was not available to work Friday 6:00 p.m. to Sunday 6:00 p.m. does not make the claimant unavailable for work for unemployment insurance purposes. The days the claimant was in jail does not restrict his availability to work to the extent that it removes him from the job market. The evidence establishes that as of November 29, 2009, the claimant was available to work the majority of the week and is eligible to receive benefits.

**DECISION:**

The representative's February 12, 2010 decision (reference 09) is affirmed. As of November 29, 2009, the claimant is available for work and eligible to receive benefits, provided he meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs