

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

JESSE O'THOMAS
2965 – 19TH AVE
MARION IA 52302

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-03283-BT
OC: 11/20/05 R: 03
Claimant: Appellant (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Availability for Work

STATEMENT OF THE CASE:

Jesse O'Thomas (claimant) appealed an unemployment insurance decision dated March 10, 2006, reference 03, which held that he was not eligible for unemployment insurance benefits for the three-week period ending March 4, 2006 because he was not available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2006. 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 out of town for the three-week period ending March 4, 2006. He was staying with family members and does not consider it a vacation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able and available for work. For the reasons that follow, the administrative law judge concludes that the claimant was not available to work.

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 24.23(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). While he denies he was on vacation, he testified that he was out of town staying with relatives. The description of the claimant's time out of town is irrelevant but the fact remains that he was out of town. The Administrative Law Judge finds the claimant was not able and available for the three-week period ending March 4, 2006. Benefits are denied for that same time frame.

DECISION:

The unemployment insurance decision dated March 10, 2006, reference 03, is affirmed. The claimant did not meet the availability requirements of the law for the three-week period ending March 4, 2006 and benefits are denied for those weeks.

sdb/tjc