

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

LARRY W GITTINS  
812 – 2<sup>ND</sup> ST  
HARLAN IA 51537-1413

JIMS MARKET & LOCKER INC  
PO BOX 111  
HARLAN IA 51537

Appeal Number: 06A-UI-07850-JTT  
OC: 04/02/06 R: 01  
Claimant: Respondent (2R)

**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) – Able and Available

STATEMENT OF THE CASE:

Jim's Market & Locker filed a timely appeal from the July 31, 2006, reference 03, decision that allowed benefits effective June 25, 2006 and deemed claimant Larry Gittins able and available for work effective June 25, 2006. After due notice was issued, a hearing was held on August 21, 2006. Mr. Gittins did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. President Jim Goeser represented the employment. The administrative law judge took official notice of the Agency's administrative file and Clerk of Court records made available to the public at the Iowa Judicial Branch's official website, [www.judicial.state.ia.us](http://www.judicial.state.ia.us).

## FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Larry Gittins was employed by Jim's Market & Locker as a full-time production worker for approximately five years until the employer imposed a leave of absence on or about March 28, 2006. President Jim Goesser determined it was best that Mr. Gittins not be at the workplace while Mr. Gittins faced prosecution for a criminal offense. Mr. Goesser instructed Mr. Gittins to return to the employer once the criminal matter was resolved and the employer would decide at that time whether to allow Mr. Gittins to continue in the employment. Mr. Gittins did not return to the employer. Mr. Gittins established a claim for benefits that was effective April 2, 2006. On April 5, 2006, Mr. Gittins commenced part-time employment at Mickel's restaurant in Harlan. Mr. Gittins has continued in that part-time employment.

Clerk of Court records made available to the public at the Iowa Judicial Branch's official website, [www.judicial.state.ia.us](http://www.judicial.state.ia.us), indicate that Mr. Gittins is the defendant in Cass County Case Number FECR011739 in connection with a Trial Information filed on March 27, 2006. Mr. Gittins was arrested on March 28, 2006 and posted bond on April 5, 2006. Mr. Gittins has a pre-trial conference scheduled for August 21, 2006. In addition, Mr. Gittins is the defendant in Shelby County Case Number OWMG022775 in connection with an arrest on May 17, 2006 and a Trial Information filed on June 5, 2006. On August 14, 2006, Mr. Gittins entered a guilty plea in Case Number OWMG022775 to Operating While Intoxicated, First Offense, a serious misdemeanor. Sentencing is set for August 28, 2006. It is unclear from the court records whether Mr. Gittins continues in custody on the Operating While Intoxicated charge.

Jim's Market & Locker was Mr. Gittins' only base period employer.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Gittins has been able and available for work since June 25, 2006 and whether Mr. Gittins is currently able and available for 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Based on the evidence in the record, the administrative law judge concludes that Mr. Gittins has failed to establish, by a preponderance of the evidence, that he has been available to work since June 25, 2006 or that he is currently available for work, as required by Iowa Code section 96.4(3). Accordingly, effective June 25, 2006, Mr. Gittins is not eligible for unemployment insurance benefits. Mr. Gittins will continue to be ineligible for benefits until he demonstrates that he is in fact available for full-time employment.

The evidence in the record indicates there may have been a separation from the employment. The parties were not provided with formal notice that issues related to a separation from employment would be addressed at the hearing and the claimant was not available to waive formal notice. This matter will be remanded for determination of whether there has been a separation, the nature of any such separation, and the impact on the claimant's eligibility for benefits.

#### DECISION:

The Agency representative's July 31, 2006, reference 03, decision is reversed. The claimant has not shown that he has been available for full-time employment since June 25, 2006 or that he is currently available for full-time employment. Effective, June 25, 2006, the claimant is not eligible for benefits.

#### REMAND:

This matter is remanded for determination of whether there has been a separation, the nature of any such separation, and the impact on the claimant's eligibility for benefits.

jt/pjs