

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY O’HERN**  
Claimant

**APPEAL NO: 12A-UI-00395-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LARSON MANUFACTURING COMPANY  
OF SOUTH DAKOTA INC**  
Employer

**OC: 12-18-11  
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 9, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 13, 2012. The claimant participated in the hearing. Dan Hemmen, Manufacturing Operations Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a second shift product assembler for Larson Manufacturing Company of South Dakota. The employer runs a first shift from 6:00 a.m. to 3:30 p.m. Monday through Thursday and a second shift from 3:30 p.m. to 2:00 a.m. Monday through early Friday morning. During the holiday season, depending on business needs, the employer sometimes offers voluntary time off. Toward the end of 2011 the employer surveyed second shift employees to see if there was enough interest in keeping the second shift running between December 18 and December 31, 2011, and asking employees what, if any, days off they wanted. The results were that not enough employees wanted to work second shift during that time period to run a second shift. Consequently, the employer offered second shift employees the opportunity to work first shift. The claimant volunteered to work December 19 through 22, 2011, on second shift and requested December 28, 29 and 30, 2011, as vacation days on the survey taken by the employer of second shift employees. He took unpaid time off for the remainder of the days the employer did not run a second shift.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able and available for second shift work the majority of the work week ending December 24, 2011, but was not able and available for work the majority of the week ending December 31, 2011.

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 regularly scheduled days off are Friday, Saturday and Sunday so he was not scheduled to work Sunday, December 18. He was able and available for work Monday, December 19 through Thursday, December 22, 2011. Friday, December 23, 2011, was a holiday for the employer, before the claimant was off on his regularly scheduled day off Saturday, December 24, 2011. Consequently, he was able and available for the week ending December 24, 2011. He was off on his regularly scheduled day off Sunday, December 25, 2011, and Monday, December 26, 2011, was a holiday for the employer. The claimant took Tuesday, December 27, 2011, as an unpaid day and used vacation days Wednesday, December 28, 2011, and Thursday, December 29, 2011. He was off on his regularly scheduled days off Friday, December 30, 2011, and Saturday, December 31, 2011. Consequently, he was not able and available for work the majority of the week ending December 31, 2011. Therefore, the claimant is able and available for work, and eligible for benefits, the week ending December 24, 2011, but not able and available for work the majority of the week, and thus not eligible for benefits, the week ending December 31, 2011, as he requested December 28, 29 and 30, 2011, off when the employer surveyed employees.

**DECISION:**

The January 9, 2012, reference 01, decision is modified in favor of the claimant/appellant. The claimant is able to work and available for work the week ending December 24, 2011, but not able and available for work the week ending December 31, 2011. Benefits are allowed the week ending December 24, 2011.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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