

**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**

**ELMER L YOUNG JR
1104½ E 8TH ST
MUSCATINE IA 52761**

**R J PERSONNEL INC
DBA TEMP ASSOCIATES
PO BOX 1061
MUSCATINE IA 52761-1061**

**Appeal Number: 04A-UI-05545-RT
OC: 04-18-04 R: 04
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 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Elmer L. Young, Jr., filed a timely appeal from an unemployment insurance decision dated May 10, 2004, reference 07, denying unemployment insurance benefits to him from April 25, 2004 to May 1, 2004 because he was not able to work during that period of time. After due notice was issued, a telephone hearing was held on June 9, 2004 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Angie Brauns, Account Manager, and Dave Carlson, Account Manager, participated in the hearing for the employer, R J Personnel, Inc., doing business as Temp Associates. This appeal was consolidated with appeal 04A-UI-05544-RT for the

purposes of the hearing with the consent of the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective April 18, 2004 and received unemployment insurance benefits for one week, benefit week ending April 24, 2004. In appeal 04A-UI-05544-RT, the administrative law judge concludes that the claimant was not entitled to receive unemployment insurance benefits after April 30, 2004, because his separation from the employer, R J Personnel, Inc., doing business as Temp Associates, was disqualifying effective for benefit week ending May 1, 2004 and continuing thereafter. The employer does not contest unemployment insurance benefits for benefit week ending April 24, 2004. At fact finding the claimant testified that he was not able to work from April 28, 2004 to April 30, 2004 because of alleged eye problems that he alleges were caused by alleged carbon monoxide poisoning in riding in a van or truck but concedes at fact finding that he has no proof that this is what caused his eye problem.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits from April 28, 2004 to April 30, 2004 or benefit week ending May 1, 2004, because he was not able 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".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he was able to work from April 28, 2004 to April 30, 2004. The employer's witnesses had no evidence as to the claimant's ability and availability for work after April 27, 2004. The claimant conceded at fact finding that he was not able to work from April 28, 2004 to April 30, 2004. Accordingly, the administrative law judge concludes that the claimant was not able to work from April 28, 2004 to

April 30, 2004 and, as a consequence, he is ineligible to receive unemployment insurance benefits for that time or for benefit week ending May 1, 2004.

DECISION:

The representative's decision of May 10, 2004, reference 07, is affirmed. The claimant, Elmer L. Young, Jr., is not entitled to receive unemployment insurance benefits from April 25, 2004 to May 1, 2004 or benefit week ending May 1, 2004, because he was not able for work.

tjc/tjc