

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEREK L STEIN
Claimant

APPEAL NO. 12A-UI-00606-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SATERN EXTERIORS
Employer

OC: 12/12/10
Claimant: Appellant (4-R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 12, 2012, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 21, 2012. The claimant participated. The employer participated by Deb Satern. The record consists of the testimony of Derek Stein and the testimony of Deb Satern. Official notice is taken of agency records.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer does siding, roofing, and gutters. This is seasonal work. Every year the employer tells its employees when the season is over and when they should apply for unemployment insurance benefits.

On December 12, 2011, the claimant heard some employees out in the shop talking about unemployment. He thought he should go and apply for unemployment benefits that week, which he did. The first week claimed was for the week ending December 18, 2011. The employer protested because the seasonal layoff had not yet occurred. The layoff was announced on January 16, 2012. The claimant has tried to file online, but his claim gets rejected. He was told by the Fort Dodge office that he cannot make a claim until he has this hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The evidence in this case established that the claimant prematurely filed his claim for unemployment benefits. The seasonal layoff took place on January 16, 2012. The employer filed the protest only because the layoff had not occurred when the claim was originally filed. The claimant is able and available for work as of January 15, 2012.

DECISION:

The representative's decision dated January 12, 2012, reference 02, is modified in favor of the appellant. The claimant is able and available for work as of January 15, 2012.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw