

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

DOREEN BRYANT  
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IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-02038-BT  
OC: 01/23/05 R: 03  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Doreen Bryant (claimant) appealed an unemployment insurance decision dated February 18, 2005, reference 02, which held that she was not eligible for unemployment insurance benefits because she was not available for work from February 13, 2005 through February 26, 2005. After hearing notices were mailed to the party's last-known address of record, a telephone hearing was held on March 14, 2005. 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 not available for a couple days each week during the two-week period ending February 26, 2005 because she was out of town.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is 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".

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). While the claimant was gone a few days out of each week for the two-week period ending February 26, 2005, she was available for most of the week. When an individual is available for the major portion of the workweek, that individual is considered to be available for work. 871 IAC 24.22(h). The claimant met her burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated February 18, 2005, reference 02, is reversed. The claimant is qualified for benefits provided she is otherwise eligible.

sdb/kjf