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

ALFRED LOTTIE
BLD A APT 1
3560 E DOUGLAS AVE
DES MOINES IA 50317

A+ LAWN & LANDSCAPING INC
6336 HICKMAN RD #203
DES MOINES IA 50322

Appeal Number: 05A-UI-07632-DT
OC: 06/19/05   R: 02
Claimant: Appellant (2/R)

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:

Alfred Lottie (claimant) appealed a representative's July 25, 2005 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with A+ Lawn & Landscaping, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a representative or witness could be reached for the hearing and did not participate in the hearing. This appeal was consolidated for hearing with one related appeal, 05A-UI-07633-DT. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant began working for the employer on or about March 1, 2004. He worked full time as a laborer on an 8:00 a.m. to 4:00 p.m. Monday through Saturday schedule. He had a suspended driver's license, and so was dependent upon his wife for transportation. His last day of work was June 7, 2005. On June 8, 2005, the claimant's wife was unable to drive him to work, so he proceeded to drive himself. On the way, he was pulled over and arrested. He was in jail through June 10, 2005, but was then released from jail. He did not return to work with the employer, as on the afternoon of June 10 the claimant's wife had stopped by the employer to pick up the claimant's paycheck to use as bail, and the employer required that the claimant's work shirts be turned in before the check was issued, so the claimant's wife returned his shirts. It does not appear that the separation issue has yet been adjudicated.

He still cannot legally drive himself, but he is still normally able to have his wife drive him or to use public transportation. He has sufficient means of transportation that he can perform his required work search and could accept and get to a job if it were offered. The claimant established an unemployment insurance benefit year effective June 19, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

During the time the claimant was in jail, he was not available for work. 871 IAC 24.23(12). Losing a means of transportation can also result in a conclusion of being unavailable for work. 871 IAC 24.23(4). The claimant only lost a means of transportation for a brief time. While he was unavailable for work for a period of time prior to establishing his claim for unemployment insurance benefits, he has been able and available for work since the establishment of his claim. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to a potential separation from employment arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's July 25, 2005 decision (reference 03) is reversed. The claimant is able to work and available for work effective June 19, 2005. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

ld/kjw