

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

RICK K MORK
985 S 15TH ST
MARION IA 52302

MIKE WOLFE PAINTING INC
211 - 12TH ST
MARION IA 52302

Appeal Number: 04A-UI-12814-MT
OC: 11/14/04 R: 03
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 - Able and Available
Section 96.19 – Temporary Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 24, 2004, reference 03, which held claimant not temporarily unemployed but found him able and available for work. After due notice, a telephone conference hearing was scheduled for and held on December 21, 2004. Claimant participated personally with witness Ralph Tiernan. Employer participated by Mike Wolfe, Owner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off due to lack of work November 15, 2004. Claimant was told that he would not be brought back for three or four months when the painting business picked up in the spring. At the time of hearing, claimant had been off work for more than 30 days.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant is temporarily unemployed.

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".

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.

Inasmuch as claimant has no prospect for returning to work in less than 30 days, he is not temporarily unemployed. Claimant must make work searches as required by the workforce

development rules. As shown in the statute above temporary unemployment is defined as a period of less than 30 days. By the date of hearing, claimant had been unemployed over 30 days. As such, the decision ordering work searches is affirmed.

DECISION:

The decision of the representative dated November 24 2004, reference 03 is affirmed. Claimant is not temporarily unemployed and must make work searches weekly.

mdm\smc