

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS E POOLE**  
Claimant

**APPEAL NO: 09A-UI-03953-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**OC: 10/19/08**

**Claimant: Respondent (1/R)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Temp Associates (employer)) appealed a representative's March 6, 2009 decision (reference 03) that concluded Thomas E. Poole (claimant) was qualified to receive unemployment insurance benefits as being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2009. The claimant participated in the hearing. Deb Perdue appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 employer is a temporary employment firm with an office in Mt. Pleasant, Iowa. The claimant began taking assignments with the employer on March 6, 2006. His most recent assignment as of the date of the hearing ended October 15, 2008. A different representative's decision concluded that the separation was not disqualifying.

On December 2, 2008 the employer offered the claimant a job with a Mount Pleasant business client to begin on December 3. The claimant tentatively accepted the position and was scheduled to start. However, on Wednesday, December 3 the claimant discovered that his car had a gas leak and was not operating. He contacted the employer and reported that he could not accept the assignment for that day due to having no other transportation, and inquired as to whether the start date for the assignment could be pushed back until Monday, December 8, so he could get the car fixed over the weekend. The employer indicated that the start of the assignment could not be delayed, so the claimant did not get that assignment. The employer's representative suggested to the claimant that he recontact the employer when he got his car fixed. While the claimant did have the car fixed by December 8, he did not follow up with the employer, as he decided to pursue some other employment opportunities elsewhere. He did

make the necessary job contacts, including one requiring him to drive to Fort Madison, about 26 miles away.

#### **REASONING AND CONCLUSIONS OF LAW:**

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3.

Determinations as to whether a claimant is eligible as able and available for work are made on a week to week basis. 871 IAC 24.22(3)(d). A claimant who has temporarily lost his means of transportation is not able and available for work and not eligible for unemployment insurance benefits until his means of transportation is recovered. 871 IAC 24.23(4). There is no requirement that a person who has been separated from his prior employer affirmatively make himself available to return to work with that employer, even if that employer is a temporary employment firm, where, as here, the claimant had at least initially contacted the employer for reassignment immediately after the completion of his last assignment. Iowa Code § 96.5-1-j; 871 IAC 24.26(19).

The claimant was not able and available for work the majority of the work week ending December 6, 2008, and so was not eligible for benefits for that week. He was able and available for work beginning December 7, 2008, and benefits are allowed as of that date.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant received benefits for the week ending December 6, 2008 but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

#### **DECISION:**

The representative's March 6, 2009 decision (reference 03) is affirmed. The claimant was not able to work and available for work for the benefit week ending December 6, 2008, and was not eligible for benefits for that week. He became able and available for work and again eligible to

receive unemployment insurance benefits effective December 7, 2008. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue for the week ending December 6, 2008.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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