

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL E TOMMAN**  
Claimant

**APPEAL NO: 10A-UI-16908-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IPSCO TUBULARS INC**  
Employer

**OC: 03/01/09**  
**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 6, 2010, reference 03, that held he was not eligible for benefits effective November 21, 2010, because he does not meet the availability requirements of the law. A telephone hearing was held on February 7, 2011. The claimant participated. Kathy Borkgren, HR Specialist, participated for the employer.

**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 the evidence in the record, finds: The claimant worked for the employer as a full-time machine operator beginning October 1, 2010. The claimant also performed some clean-up duties in addition to operating his machine. The claimant filed an additional unemployment claim the week effective November 21, 2010 due to a plant shut-down.

The employer provided notice to the claimant and other employees they could sign-up for clean-up work at their regular pay rate for the one week shut down ending November 28 in order to get in 40 hours. The employer paid the claimant and other employees 16 hours (or two days) of holiday pay for November 25/26. The sign-up was voluntary, and claimant believed he was advised that he could receive unemployment rather than sign-up and work.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 administrative law judge concludes that the claimant is not eligible for benefits the week ending November 28, 2010, because he failed to work when the employer made it available to him.

Although the sign-up to work was voluntary, the claimant chose unemployment rather than to perform work that is disqualifying. However, the department imposed an indefinite disqualification period that should be limited to the week ending November 28, 2010.

**DECISION:**

The department decision dated December 6, 2010, reference 03, is modified. The claimant is not eligible for benefits the week ending November 28, 2010, because he failed to work hours the employer made available to him.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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