

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE M PORTILLO**

Claimant

**APPEAL NO. 10A-UI-00569-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOB LENC LANDSCAPING INC**

Employer

**OC: 11/22/09**

**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated December 30, 2009, reference 02, which held claimant no longer temporarily employed. After due notice, a telephone conference hearing was scheduled for and held on February 24, 2010. Claimant participated personally. Employer participated by Felicia Ramirez, Human Resources. Exhibit A was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant has been unemployed for over four weeks. Claimant is no longer temporarily unemployed.

**REASONING AND CONCLUSIONS OF LAW:**

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 the unemployment has extended beyond four weeks claimant is no longer temporarily unemployed. Claimant shall actively seek work by contacting at least two employers each week.

**DECISION:**

The decision of the representative dated December 30 2009, reference 02, is affirmed. Claimant is no longer temporarily unemployed, effective December 30, 2009.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs