

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAIN G GUERRERO**  
Claimant

**APPEAL NO. 10A-UI-00543-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAPITAL SITEWORK & DESIGN INC**  
Employer

**OC: 12/06/09**  
**Claimant: Appellant (4)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Cain Guerrero filed an appeal from a representative's decision dated January 7, 2010, reference 03, which denied benefits on a finding that he refused suitable work with Capital Sitework & Design, Inc. After due notice was issued, a hearing was held by telephone on February 22, 2010. The employer participated by Mary Howland, Office Manager. Mr. Guerrero submitted a written statement, admitted as Exhibit A, in lieu of appearance.

**ISSUE:**

At issue in this matter is whether Mr. Guerrero is entitled to job insurance benefits on his claim filed effective December 6, 2009.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Guerrero began working for Capital Sitework & Design, Inc. on June 5, 2009. He was hired to work full time as a driver on the sod crew in the employer's landscaping business. The landscaping work is seasonal and it was anticipated that he would work in snow removal during the winter months. Mr. Guerrero was laid off on December 4, 2009.

The employer contacted Mr. Guerrero on December 8 to assist in snow removal. He indicated that he had signed up for unemployment benefits and would only work in snow removal if the employer paid him in cash. He also indicated he was having difficulty getting his vehicle out of the driveway. The employer offered to come get him but declined to pay him in cash. Because the employer would not pay him in cash, Mr. Guerrero declined the work. With the exception of the weeks ending January 16 and February 13, some work in snow removal would have been available each week beginning the week ending December 12, 2009. The number of hours available each week ranged from a low of 5 to a high of 48.

**REASONING AND CONCLUSIONS OF LAW:**

The work offered to Mr. Guerrero on December 8 was not regular, full-time work. The employer that had laid him off for the season offered periodic snow removal work with no guarantee of any hours. Work would be available on an as-needed basis. The administrative law judge does not believe this is the type of work contemplated by Iowa Code section 96.5(3)a. The issue is more properly framed as whether Mr. Guerrero remained available to the employer that laid him off.

An individual who is on a temporary layoff is not usually required to satisfy the availability requirements of Iowa Code section 96.4(3). However, he must remain available to the employer that laid him off. 871 IAC 24.23(41). The employer in this matter had work available for almost all of the weeks that Mr. Guerrero has been on layoff. If he had been willing to work, there would have been actual employment in suitable work except for the weeks ending January 16 and February 13, 2010. He chose not to make himself available for the work the employer was offering. Therefore, he is not entitled to job insurance benefits for any week in which the employer had work available. It is true that the employer did not contact him each week in which there was snow removal work. However, Mr. Guerrero had made his position regarding snow removal work known to the employer. Therefore, there was no reason to call him each time it snowed.

Mr. Guerrero is allowed benefits for the weeks ending January 16 and February 13, 2010 as the employer had no work available during those two weeks.

**DECISION:**

The representative's decision dated January 7, 2010, reference 03, is hereby modified. Mr. Guerrero is allowed benefits for the two weeks ending January 16 and February 13, 2010. Benefits are denied for all other weeks beginning December 6, 2009 as he was not available to the employer that laid him off.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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