

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

DUSTIN L O'BRIEN  
316 – 6<sup>TH</sup> ST  
SCHLESWIG IA 51461

DALTON AUTO SALES INC  
1904 HWY 30 E  
DENISON IA 51442

Appeal Number: 04A-UI-03111-DT  
OC: 02/01/04 R: 01  
Claimant: Respondent (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, 4<sup>th</sup> 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 – Active Search for Work  
Iowa Code Section 96.19-38-c – Temporarily Unemployed

STATEMENT OF THE CASE:

Dustin L. O'Brien (claimant) appealed a representative's March 17, 2004 decision (reference 02) that concluded he was required to perform a search for work after separation from Dalton Auto Sales, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2004. This appeal was consolidated for hearing with five related appeals, 04A-UI-03313-DT, 04A-UI-03314-DT, 04A-UI-03315-DT, 04A-UI-03316-DT, and 04A-UI-03317-DT. The claimant participated in the hearing as well as four other claimants. Brian Dalton 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: Is the claimant required to perform a search for suitable work?

FINDINGS OF FACT:

The employer operates a used auto sales and automobile service business on a single business site upon which three buildings were located. The employer employed approximately 15 employees. After-hours on February 4, 2004, a fire destroyed the main building, but left the two smaller buildings intact. As a result, the claimant, a full time auto body technician, was off work beginning February 5. The employer has resumed partial operations in the two smaller buildings with five employees, including two mechanics, one clean-up person, one office person, and one sales person. The employer plans to rebuild and reopen its main building. Building plans have been submitted and approved by the city of Denison; however, the employer is still awaiting an insurance settlement before it can contract for construction of a new building. The employer's best-case estimate is that the building could be rebuilt and open in September 2004. The employer intends to recall the claimant to employment if the claimant is still available at the time the building reopens.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is required to perform a search for work. An active search for work is a general eligibility requirement for unemployment insurance. Iowa Code Section 96.4-3. However, the work search requirement "is waived if the individual is deemed . . . temporarily unemployed as defined in section 96.19, subsection 38, paragraph 'c'". Id. Iowa Code Section 96.19-38-c defines temporary unemployment as follows:

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. (Emphasis added.)

The claimant was initially temporarily unemployed; however, more than four weeks have passed since the claimant's layoff from work due to the fire; therefore, he is now subject to the work search requirement.

DECISION:

The representative's March 17, 2004 (reference 02) decision is affirmed. The claimant must perform a search for suitable work in order to retain his benefit eligibility. Benefits are allowed, if the claimant is otherwise eligible.

ld/kjf