

**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**

**JAMIE S THROCKMORTON
2700 FLINT HILLS DR
BURLINGTON IA 52601**

**TEMP ASSOCIATES
1000 N ROOSEVELT AVE
BURLINGTON IA 52601**

**Appeal Number: 04A-UI-02476-B4T
OC: 05/04/03 R: 04
Claimant: Appellant (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, 4th 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 – Whether claimant is able and available for work

STATEMENT OF THE CASE:

Jamie S. Throckmorton appealed from an unemployment insurance decision dated February 25, 2004, reference 14, amending 10 that held, in effect, the claimant was not eligible to receive unemployment insurance benefits from February 1, 2004 through February 14, 2004 because the records indicated she was not able and available for work due to an injury.

A telephone conference hearing was scheduled and held on April 12, 2004 pursuant to due notice. Jamie S. Throckmorton participated. Jan Winsor, Manager at Burlington, Iowa participated on behalf of Temp Associates.

Official notice was taken of the unemployment insurance decision dated February 24, 2004, reference 14, amending 10, together with the pages attached thereto (1 page in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Jamie S. Throckmorton was employed with Temp Associates on or about November 20, 2002. The claimant worked on several job assignments with Temp Associates. The last job assignment commenced on December 1, 2003 and ended on February 4, 2004. The claimant had contended that she was injured at work and was sent to see her doctor on February 4, 2004. On February 5, 2004, the claimant returned and stated that her back injury was not job related. The claimant was then sent to see a doctor assigned to her by Temp Associates on February 6, 2004. The doctor provided a statement indicating the claimant was able to return to work. On February 6, 2004, the claimant held a conversation with Jan Winser, Manager at Burlington, Iowa. The claimant was taking a muscle relaxant and could not be allowed to return to work. The claimant was also to inform Jan Winser, Manager that she was suffering pain and was unable to return to work.

The claimant was then absent for several days and on February 12, 2003, the claimant held another conversation with Jan Winser, Manager. The claimant was informed by Jan Winser that when she was able to return to work that she should call. The claimant did not call back and on February 16, 2004 another conversation was held with Jan Winser who informed the claimant that she could not return to work until she had obtained a release from her physician. On February 20, 2004, the claimant informed Jan Winser that she had found new employment. The claimant was apparently self-employed and working as a subcontractor with Winegart.

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".

871 IAC 24.23(1), (7) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.
- (7) Where an individual devotes time and effort to becoming self-employed.

The evidence in the record establishes that the claimant was unable to return to her job assignment with Temp Associates because of a pain in her back for which she was taking

specific medication. The claimant was apparently released to return to work at a later point in time, but was not available for work for the period from February 1, 2004 through February 14, 2004 because of her medical condition relating to a prior back injury. It is apparent that now the claimant is self-employed and working as a subcontractor with Winegart.

The administrative law judge concludes that Jamie S. Throckmorton is not eligible to receive unemployment insurance benefits for the period from February 1, 2004 through February 14, 2004 because she was not able to return to work due to her injury; all within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated February 25, 2004, reference 14, amending 10, is affirmed. Jamie S. Throckmorton is not eligible to receive unemployment insurance benefits from February 1, 2004 through February 14, 2004.

kjf/kjf