

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT S HAWKINS
Claimant

APPEAL NO. 11A-UI-00919-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCAITES
Employer

OC: 12/23/07
Claimant: Respondent (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 18, 2011, reference 02, that held the claimant was eligible for benefits beginning January 2, 2011, as he was able and available for employment. A telephone hearing was held on February 21, 2011. The claimant participated. Deborah Perdue, Branch Manager, participated for the employer.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the stipulation finds: The claimant last worked for the employer on November 30, 2009. The department issued a decision dated December 21, 2009, reference 01, that held the claimant did not meet the availability requirements of the law and that denied benefits.

The claimant went to work for Fairfield Tire & Service (employer number 227331) in 2010. The claimant was terminated from employment January 21, 2011. The department issued a decision dated February 18, 2011, reference 03, that held claimant was not discharged for misconduct and that allowed benefits.

The claimant has not worked for the employer since November 30, 2009. He is able and available for work.

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".

The administrative law judge concludes that there is no new availability issue involving the claimant and the employer since he last worked on November 30, 2009. The claimant left employment due to a transportation issue, which is the reason for the disqualification. However, the claimant went to work for Fairfield Tire & Service during 2010, and his January 21, 2011 employment separation from that employer allows him benefits by reason of the February 18 department decision.

There is no new availability issue involving the claimant and the employer in this matter. The claimant is able and available for work, but the employer has no liability for his recent, January 9, 2011, unemployment claim.

DECISION:

The department decision dated January 18, 2011, reference 02, is dismissed, set aside, and should be deleted. There is no availability issue beginning January 2, 2011.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw