

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL MERCADO-RAMIREZ
Claimant

APPEAL NO. 11A-UI-13566-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIRDS EYE FOODS LLC
Employer

OC: 06-05-11
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 7, 2011, reference 02, decision that denied benefits effective July 17, 2011. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 9, 2011. The claimant participated in the hearing with Interpreter Ike Rocha. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant interviewed for a position with this employer July 20, 2011, but did not start work until August 8, 2011. He then worked as a sanitation employee until November 3, 2011, at which time he was laid off due to a lack of work, as his was a seasonal position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work from June 5, 2011 through the week ending August 6, 2011, and again beginning the week ending November 12, 2011.

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 claimant interviewed for a position with Birds Eye Foods July 20, 2011, but did not start working for the employer until August 8, 2011. Accordingly, he was able and available for work until the week ending August 6, 2011, and again beginning the week ending November 12, 2011, following his seasonal layoff from this employer. Therefore, benefits are allowed.

DECISION:

The October 7, 2011, reference 02, decision is reversed. The claimant is able to work and available for work effective June 5, 2011, until the week ending August 6, 2011, and again the week ending November 12, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw