

**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**

**ROBERT R FOTH  
PO BOX 178  
LIVERMORE IA 50558**

**HARRY'S HEATING & COOLING INC  
PO BOX 273  
LIVERMORE IA 50558**

**Appeal Number: 04A-UI-02689-B4T  
OC: 01/25/04 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Whether claimant is able and available for work  
Section 96.4-3 – Whether claimant is still employed at same hours and wages

STATEMENT OF THE CASE:

An appeal was filed on behalf of Harry's Heating & Cooling, Inc., from an unemployment insurance decision dated March 4, 2004, reference 01, that held, in effect, the claimant was eligible to receive unemployment insurance benefits beginning on January 25, 2004, provided he met all other eligibility requirements. An explanation of the decision was that the records indicate the claimant's availability for work was questioned. The claimant, however, appeared to be self-employed and his unemployment was due to a short-term lay off. Robert R. Foth was considered able and available for work during the lay off.

A telephone conference hearing was scheduled and held on April 1, 2004 pursuant to due notice. Robert R. Foth did not respond to the notice of hearing mailed to him by the Appeals

Section by providing a telephone number of where he could be contacted. The claimant did not participate in the hearing held. Dennis Stalzer, President, participated on behalf of Harry's Heating & Cooling, Inc.

Official notice was taken of the decision under consideration dated March 4, 2004, reference 01. Employer's Exhibit One was admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Robert R. Foth was employed on a full time basis with Kampen Construction work. The claimant was laid off due to the season of the year.

The claimant was employed with Harry's Heating & Cooling, Inc., on or about February 11, 2003 as a laborer. The claimant was hired as temporary help.

The claimant's last check was May 28, 2003.

The claimant returned to work for two weeks in 2004 as temporary help with Harry's Heating & Cooling, Inc. The claimant was hired by Dennis Stalzer, President, in order to enable the claimant to earn money to repay for a debt due to Harry's Heating & Cooling, Inc. While the claimant did not participate, the evidence establishes that the claimant is able and available for work. The claimant returned to Kampen Construction and left his temporary employment with Harry's Heating & Cooling, Inc.

#### 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 evidence in the record establishes that the claimant has been able and available for work throughout the period of his lay off from Kampen Construction during the year 2003-2004. The claimant has now returned to work with Kampen Construction and is presently employed.

The evidence in the record establishes that the claimant was able and available for work effectively on and after January 25, 2004 within the intent and meaning of Iowa Code Section 96.4-3. The evidence also indicates there has been a termination of employment with Harry's Heating & Cooling, Inc. when the claimant left his temporary job to return to Kampen Construction. This matter should therefore be remanded for an inquiry or determination relating to the nature of the claimant's termination of employment.

DECISION:

The unemployment insurance decision dated March 4, 2004, reference 01, is affirmed. Robert R. Foth is able and available for work effective January 25, 2004 and benefits are allowed provided he is otherwise eligible under the provisions of the Iowa Employment Security Law. This matter is remanded to the Unemployment Insurance Services Division for inquiry with respect to the nature of the claimant's termination of employment with Harry's Heating & Cooling, Inc., in June 2003.

kjf/b