

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EFRAIN GUTIERREZ
Claimant

APPEAL NO: 14A-UI-11350-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAMES HOLADAY
Employer

**OC: 08/17/14
Claimant: Appellant (6)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 28, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20 and continued on December 10, 2014. The claimant participated in the hearing. James Holaday, Owner of Holaday Satellite, participated in the hearing on behalf of the employer and was represented by Attorney Lyndsey Kaufman. Employer's Exhibits One through Twelve were admitted into evidence.

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 was separated from Holaday Satellite August 18, 2014, and filed a claim for benefits with an effective date of August 17, 2014. The claimant was allowed benefits in the representative's decision dated September 3, 2014. The employer appealed that decision to the Appeals Section and a hearing was held October 1, 2014, before Administrative Law Judge Lynette Donner. Judge Donner also found in favor of the claimant and allowed benefits in a decision dated October 9, 2014. The employer appealed Judge Donner's decision to the Employment Appeal Board and it reversed Judge Donner's decision and denied benefits to the claimant in a decision dated November 25, 2014.

Because the claimant prevailed during decisions issuing from the fact-finding interview and the appeal hearing before being denied benefits by the Employment Appeal Board, the rule of two affirmances went into effect. As a result, the employer's account is not subject to charge for the \$511.00 in weekly benefits the claimant received for the nine weeks ending October 18, 2014, for a total of \$4,599.00 and the claimant is not overpaid that amount.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the issue of whether claimant is able to work and available for work is moot and therefore dismissed.

Iowa Code § 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 was ultimately denied benefits by the decision of the Employment Appeal Board dated November 25, 2014. In order to be eligible for benefits, a claimant has to found eligible following his separation from the employer and also must be able and available for employment. As a result of that decision by the Employment Appeal Board and the rule of two affirmances, the claimant was denied benefits and the decision regarding whether the claimant is able and available for work is now moot and there is no need to make a determination of that issue. Consequently, the claimant's appeal of the decision determining he was not able and available for work is dismissed as a decision on that matter would have no impact on the claimant receiving or not receiving unemployment insurance benefits.

DECISION:

The October 28, 2014, reference 02, decision is dismissed. The claimant was eventually denied unemployment insurance benefits by the Employment Appeal Board following his separation from employment with Holaday Satellite but due to the rule of two affirmances, whereby Claims and the administrative law judge allowed benefits, the employer's account shall not be charged and the claimant is not overpaid unemployment insurance benefits he has received to date. The issue of whether the claimant is able to work and available for work is moot as it would not impact whether the claimant received unemployment insurance benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs