

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

KARL C GAISER
3009 PARK AVENUE #4A
SIOUX CITY IA 51104

SIOUX-PREME PACKING COMPANY
P O BOX 255
SIOUX CENTER IA 51250

Appeal Number: 04A-UI-04632-BT
OC: 12/21/03 R: 01
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 - Able and Available for Work

STATEMENT OF THE CASE:

Karl Gaiser (claimant) appealed an unemployment insurance decision dated April 13, 2004, reference 03, which held that he was not eligible for unemployment insurance benefits because he was still employed at the same hours and wages with Sioux-Preme Packing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 18, 2004. The claimant participated in the hearing. The employer participated through Walter Ortega, Safety Director/Human Resources.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from January 2, 2004 through March 30, 2004. He continued to be employed in that same capacity with no change in his hours or wages until March 30, 2004 when he was discharged. The claimant was discharged for failure to attend work due to illness. As of May 10, he subsequently returned to work full time with Tur-Pak Foods.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

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 has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He was discharged from his employment as of March 30, 2004 due to his medical inability to work. He is now employed with his former employer and is not available to accept a new assignment. Since the claimant is unable and unavailable to work, benefits are denied.

DECISION:

The unemployment insurance decision dated April 13, 2004, reference 03, is affirmed. The claimant is not able to and available for work. Benefits are therefore denied.

sdb/s