

**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**

**MILES D STAFFORD  
4103½ SEVENTH AVE  
ROCK ISLAND IL 61201**

**INTERSTATE BRANDS CORP  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03237-B4T  
OC: 02-08-04 R: 03  
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 the employer from an unemployment insurance decision dated March 16, 2004, reference 01, that held, in effect, Miles D. Stafford was able and available for work and benefits were allowed beginning February 8, 2004, provided he met all other eligibility requirements.

A telephone conference hearing was scheduled and held on April 9, 2004, pursuant to due notice. Miles D. Stafford responded to the notice of hearing by providing a telephone number where he could be contacted. Three calls placed to the number provided resulted in no response from the claimant. The claimant was not available and did not participate in the

hearing held. Kelly Green, Human Resources Associate, participated on behalf of the employer. Jeff Cranfield, Production Manager, participated as a witness on behalf of Interstate Brands Corporation.

Official notice was taken of the unemployment insurance decision, bearing reference 01, together with the pages attached thereto (6 pages in all).

**FINDINGS OF FACT:**

The administrative law judge, having examined the entire record in this matter, finds that: Miles D. Stafford was employed with Interstate Brands Corporation on August 21, 2002. The claimant was hired as a full-time employee and worked as an oven operator on the third shift. When there is a lack of work employees are assigned to different locations on different shifts in order to enable them to be guaranteed a forty-hour work week.

The company went on down time and the claimant was asked to obtain his full-time hours in the sanitation department. The claimant's last day of work was on February 5, 2004. The claimant normally has Mondays and Fridays off work on his third shift. The claimant returned to work on Tuesday, February 10, 2004 and was told to be to work at the sanitation department at 11:00 p.m. When the claimant arrived at the location where he was scheduled the sanitation department was not working at that time. No other assignments were provided to him until he returned to work on February 26, 2004 as a full-time employee once again.

The claimant filed his initial claim for benefits having an effective date of February 8, 2004 and received benefits for the three benefit weeks ending February 28, 2004. The claimant reported his wages during the benefit week ending February 28, 2004 after he returned to 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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The evidence in the record clearly establishes that the claimant was available for work on and after February 8, 2004. There had been a shutdown of the third shift to which the claimant was originally employed and assigned. The employer does guarantee a forty-hour work week and the claimant was reassigned to the sanitation department at a specific period of time. When the claimant reported for work in an appropriate manner the sanitation department was not working and there was no other job assignments made to the claimant.

The claimant has since returned to work and is working full-time under the same terms and conditions as he was originally hired at Interstate Brands Corporation.

The administrative law judge concludes that Miles D. Stafford was able and available for work on and after February 8, 2004 within the intent and meaning of Iowa Code Section 96.4-3.

DECISION:

The unemployment insurance decision dated March 16, 2004, reference 01, is affirmed. Miles D. Stafford is able and available for work effective February 8, 2004 and benefits are allowed, provided the claimant remains eligible within the intent and meaning of the Iowa Employment Security Law.

tjc/b