

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN K TOOLATE**  
Claimant

**L A LEASING INC**  
Employer

**APPEAL 16A-UI-06070-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/15  
Claimant: Respondent (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

L A Leasing, Inc. (employer) filed an appeal from the May 19, 2016, (reference 08) unemployment insurance decision that allowed benefits based upon the determination he was on a short-term layoff and was considered able and available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 15, 2016. The claimant did not participate. The employer participated through Account Manager LaKendra Miller and UI Benefits Administrator Colleen McGuinty. Department's Exhibit D-1 was received.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a temporary full-time position as a forklift driver with the employer's client TM Logistics, and his assignment ended on April 1, 2016 as it was completed. The claimant filed for unemployment insurance benefits the week of April 3, 2016. On April 5, 2016, the employer offered the claimant three positions which he declined.

On May 4, 2016, a Notice of Claim was mailed to the employer. UI Benefits Administrator Colleen McGuinty filled out the form stating she was not protesting his claim. She went on to explain the claimant was still employed, his assignment had ended on April 1, 2016 and he was starting a new position on May 16, 2016. On May 19, 2016, a fact-finder determined the claimant was on a short-term layoff and eligible for benefits. On May 20, 2016, the claimant contacted the employer and said he no longer wanted to work at the new assignment.

**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. At this time, benefits are allowed, if he is otherwise eligible.

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 employer initially told Iowa Workforce Development (IWD) that it was not contesting the claimant's claim for benefits and indicated that the claimant was temporarily laid off. Nothing in the employer's appeal letter indicated it was raising the issue of whether the claimant had refused a suitable offer of work. During the appeal hearing the employer raised the issue that the claimant had refused suitable offers of work under Iowa Code § 96.5(3)a. However, that issue was not listed on the hearing notice. The Benefits Bureau has not made an initial determination on whether he refused suitable offers of work and it is not properly before the administrative law judge. Additionally, even if the issue were properly before the administrative law judge, as both parties were not in the hearing, notice on the issue could not be waived. As the claimant is deemed to have been on a short-term layoff, at this time, he is considered able to work, available for work, and actively and earnestly seeking work from April 3, 2016 through May 16, 2016. Accordingly, benefits are allowed, if he is otherwise eligible.

**DECISION:**

The May 19, 2016, (reference 08) unemployment insurance decision is affirmed. At this time, the claimant is able to work and available for work effective April 3, 2016. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The issue of whether the claimant refused suitable offers of work under Iowa Code § 96.5(3)a is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of the claimant's separation from his assignment on May 20, 2016 is also remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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