

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

BRYAN D BURNETT  
6440 EP TRUE PKWY APT 1301  
WEST DES MOINES IA 50266

ADECCO USA INC  
c/o FRICK UC EXPRESS  
PO BOX 66736  
ST LOUIS MO 63166-6736

Appeal Number: 04A-UI-10965-BT  
OC: 11/16/03 R: 02  
Claimant: Appellant (4)

**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 - Availability for Work

STATEMENT OF THE CASE:

Bryan Burnett (claimant) appealed an unemployment insurance decision dated September 29, 2004, reference 05, which held that he was not eligible for unemployment insurance benefits because he did not meet the availability requirements of the law. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2004. The claimant participated in the hearing. The employer did not provide a telephone number at which a representative could be contacted, and therefore, did not participate.

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 found to have placed restrictions on his employability due to the wages and type of work that he was willing to accept. He removed these restrictions once he became aware of this fact when he received a copy of the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able 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".

871 IAC 24.23(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

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 admitted that he had placed restrictions on his employability but stopped this once he was notified he did not meet the eligibility requirements of the law. The disqualification decision was mailed on September 30, 2004. He is therefore not eligible for benefits until the week ending October 1, 2004.

DECISION:

The unemployment insurance decision dated September 29, 2004, reference 05, is modified in favor of the appellant. The claimant does not meet the availability requirements of the law and is not eligible for benefits prior to week ending September 25, 2004, but is eligible for benefits after that date.

sdb/b