

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

ANTHONY G HIGGINS
3033 CARR
DES MOINES IA 50311

DRAKE-BRENNAN INC
SNELLING PERSONNEL SERVICES
2423 INGERSOLL AVENUE
DES MOINES IA 50312

Appeal Number: 04A-UI-00443-BT
OC: 08/17/03 R: 02
Claimant: Respondent (2)

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:

Snelling Personnel Services (employer) appealed an unemployment insurance decision dated January 5, 2004, reference 05, which held that Anthony Higgins (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held on February 5, 2004. The claimant did not provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Bobbi Lovan, Account Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began employment on May 14, 2001 as a full-time machine operator. He has been placed on several assignments and continues to be employed with this temporary employment firm.

The claimant re-filed a claim for unemployment insurance benefits effective November 30, 2003 but has not received any benefits since his separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant has had a disqualifying separation from his employer and the administrative law judge concludes he has not. The claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

There has been no separation from employment and the claimant is currently working for this employer. As he is not able and available for employment, he is disqualified from receiving benefits.

DECISION:

The unemployment insurance decision dated January 5, 2004, reference 05, is reversed. The claimant is not able and available for work as he is still employed with the employer. Benefits are denied. There is no overpayment as a result of this decision.

sdb/s