

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JOHN PENA**  
Claimant

**APPEAL NO. 12A-UI-00426-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LARSON MANUFACTURING COMPANY  
OF SOUTH DAKOTA INC**  
Employer

**OC: 12/18/11  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

John Pena filed a timely appeal from the representative's decision dated January 9, 2012, reference 01, which denied benefits from December 18, 2011 through December 31, 2011 finding that the claimant chose to limit his availability. After due notice, a telephone hearing was held on February 15, 2012. The claimant participated personally. The employer participated by Mr. Dan Hemmen, Manufacturing Operations Manager.

**ISSUE:**

At issue is whether the claimant was able and available for work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: John Pena began employment with Larson Manufacturing Company on September 1, 1992 and continues to be employed at the time of hearing. Mr. Pena works as a full-time production specialist and is paid by the hour.

During the period between December 18, 2011 and December 31, 2011 employees were offered work, or given the option of volunteering to take time off work. Mr. Pena indicated his desire to work throughout that period, but was not willing to work available hours on the day shift, because of personal obligations.

**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".

The evidence in the record establishes that Mr. Pena did take time away from work during the period of December 18, 2011 through December 28, 2011, although work was available to him.

For the week of December 25 through December 31 the claimant was not available the major portion of the workweek and was therefore not eligible to receive unemployment benefits.

**DECISION:**

The representative's decision dated January 9, 2012, reference 01, is affirmed. The claimant was not available for work the major portion of the workweeks between December 18 and December 31, 2011 and was not eligible to receive unemployment benefits.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css