

**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**

**GILBERTO PEREZ  
820 – 4<sup>TH</sup> AVE N  
ESTHERVILLE IA 51334-1622**

**ESTHERVILLE FOODS INC  
105 N 4<sup>TH</sup>  
PO BOX 158  
ESTHERVILLE IA 51334-0158**

**Appeal Number: 06A-UI-03823-HT  
OC: 03/12/06 R: 01  
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) – Able and Available.

**STATEMENT OF THE CASE:**

The employer, Estherville Foods, filed an appeal from a decision dated March 30, 2006, reference 01. The decision allowed benefits to the claimant, Gilberto Perez. After due notice was issued, a hearing was held by telephone conference call on April 25, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Assistant Manager Martin Amdahl.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Gilberto Perez began working for Estherville Foods

on October 15, 2003. He is a full-time loader and remains employed in that capacity as of the date of the hearing.

In early March 2006 there was a slow-down in the production and Mr. Perez filed a claim for benefits with an effective date of March 12, 2006. He filed for only two weeks ending March 25, 2006.

The employer did not wish to protest benefits during those two weeks but meant to object for the week ending April 1, 2006, because the claimant had refused some available hours of work during that week.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work. The judge concludes he is.

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 claimant was able and available for work during the two weeks he claimed benefits. As he did not claim benefits for the week ending April 1, 2006, whether or not he worked all the hours available during the week does not affect his eligibility for the previous two weeks.

#### DECISION:

The representative's decision of March 30, 2006, reference 01, is affirmed. Gilberto Perez is able and available for work.

bgh/kkf