

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL W SPOERL
Claimant

APPEAL NO. 08A-UI-02511-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECISION TOOL & ENGINEERING
Employer

OC: 02/03/08 R: 04
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Michael Spoerl filed a timely appeal from the March 4, 2008, reference 02, decision that denied benefits for the week of February 3-9, 2008. After due notice was issued, an in-person hearing was held on July 22, 2008 at the Dubuque Workforce Development Center. Mr. Spoerl participated. Kevin Freiburger, owner, represented the employer. Exhibit One was received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Numbers 08A-UI-02510-JT, 08A-UI-02512-JT, and 08A-UI-02513-JT.

ISSUE:

Whether the claimant was able to work during the week of February 9, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: During the week of February 3-9, 2008, Mr. Spoerl was on a temporary lay-off from Precision Tool & Engineering. On February 5, the employer contacted Mr. Spoerl's spouse. In connection with that contact, the employer recorded at some point that Mr. Spoerl was in the hospital. Mr. Spoerl was not in the hospital that week, but was hospitalized one night during the following week.

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".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

A person is deemed temporarily unemployed if for a period, not to exceed four consecutive weeks, the individual is unemployed due to lack of work from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The evidence indicates that for the benefit weeks that ended February 9, 2008, Mr. Spoerl was temporarily unemployed for the majority of the week. Mr. Spoerl was not subject to the availability requirements of Iowa Code section 96.4(3) during the period of the period of temporary unemployment. Mr. Spoerl was able to work during the majority of the week. Mr. Spoerl is eligible for benefits for the week that ended February 9, 2008, provided he is otherwise eligible.

DECISION:

The Agency representative's March 4, 2008, reference 02, decision is reversed. The claimant was temporarily laid off during the week that ended February 9, 2008, was able to work during that week, and is eligible for benefits for that week, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs