

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOMINGO OCHOA

Claimant

APPEAL NO. 08A-UI-00216-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROOFING TECHNOLOGY INC

Employer

**OC: 12-02-07 R: 04
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 3, 2008, reference 01, decision that denied benefits effective December 2, 2007. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 23, 2008. The claimant participated in the hearing. Doug Zumaris, Owner, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began work as a full-time roofer earning \$12.57 per hour for Roofing Technology May 22, 2006. The claimant asked for December 3, and 4, 2007, off work so he could take his father to Texas, and his request was granted. The last day the employer worked was December 4, 2007. The claimant contacted the employer December 5, 2007, when he returned from Texas, but the employer did not have any work available for him because of the weather. He has maintained contact with the employer and has been able and available throughout the lay off period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work the majority of the week ending December 8, 2007, and every week following for which he has claimed benefits.

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 out of state for two days but was available for work the majority of the work week had the employer worked the remainder of that week. Accordingly, benefits are allowed effective the week ending December 8, 2007.

DECISION:

The January 3, 2008, reference 01, decision is reversed. The claimant is able to work and available for work effective December 5, 2007, or the week ending December 8, 2007. Consequently, benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw