

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

BRIAN G NIELSEN
1004 LOCUST ST
ATLANTIC IA 50022

GLACIER DAIDO AMERICA LLC
PO BOX 283
ST LOUIS MO 63166

Appeal Number: 05A-UI-01124-JTT
OC: 12/28/03 R: 01
Claimant: Appellant (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 & Available
Section 96.19(38)(c) – Temporarily Unemployed

STATEMENT OF THE CASE:

Brian Nielsen filed a timely appeal from the January 27, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 16, 2005. Mr. Nielsen participated in the hearing. Glacier Daido America participated through Maria Bailey, Human Resources Manager. Department's Exhibit D-1 was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Nielsen has been employed by Glacier Daido as a full-time set up operator since September 3, 2002. Mr. Nielsen continues in the same position, with a pay rate of \$13.91 per hour. From

December 20, 2004 to January 3, 2005, the employer shut down its plant, temporarily laying off most, if not all, of the plant's employees. It is customary for the employer to temporarily shut down the plant around Christmas. It was the employer's intent, expectation and desire that Mr. Nielsen receive unemployment insurance benefits during the temporary shutdown. However, during the shutdown the employer paid Mr. Nielsen holiday pay equal to eight hours wages for the dates of December 23, 24, and 31. During the entire period of the shutdown, Mr. Nielsen was able to perform work and intended to return to work for the employer as soon as the plant re-opened. On January 3, 2005, the plant re-opened and Mr. Nielsen returned to work.

The confusion in this matter arose when the employer's representative, TALX UC Express, submitted a protest of the claim for benefits in which it asserted Mr. Nielsen was on a medical leave of absence and therefore not able and available for work. See Exhibit D-1. The assertion that Mr. Nielsen was on a leave of absence and not able and available for work was wrong.

REASONING AND CONCLUSIONS OF LAW:

The issue on appeal is whether Mr. Nielsen was able to work during the period of time during which he established and maintained his claim for benefits. He was.

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".

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency 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).

Mr. Nielsen was at all times able to work. However, the "able and available" provisions of Iowa Code section 96.4(3) did not even apply to Mr. Nielsen, due to the fact that Mr. Nielsen was temporarily unemployed as defined in Iowa Code section 96.19(38)(c). Accordingly, benefits are allowed.

DECISION:

The January 27, 2005, reference 01, decision is reversed. The claimant was at all times in issue able to work. Because the claimant was temporarily unemployed as defined by Iowa Code section 96.19(38), the "able and available" provisions of Iowa Code section 96.4(3) did not apply. Benefits are allowed.

jt\kjf