

**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**

**ADAM M BURNETT
PO BOX 175
104 W VAN BUREN
ANDREW IA 52030**

**BREITBACH, DANIEL A
BREITBACH FLOORING
133 S MAIN ST
MAQUOKETA IA 52060**

**Appeal Number: 05A-UI-04170-MT
OC: 03/06/05 R: 04
Claimant: Respondent (1R)**

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 and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 11, 2005, reference 03, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on May 11, 2005. Employer participated by Daniel Breitbach, Co-Owner. Claimant failed to respond to the hearing notice and did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works for the employer's flooring business as a helper. Claimant is

an on-call worker providing labor when needed. The business slows during the winter months. Claimant received less work during this period of time. Claimant is able and available for work. Claimant has refused multiple assignments after filing for unemployment. Claimant was offered and refused work April 1, 2005, April 5, 2005, April 12, 2005, April 15, 2005, and April 26, 2005, and.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant is able and available for work.

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".

Benefits shall be allowed effective March 6, 2005. Claimant's hours were reduced due to seasonal slowdown. Claimant is still working on call when work is available. However there is an issue as to whether claimant refused suitable work. This matter shall be remanded for a fact-finding interview concerning the issue of refusal of suitable work pursuant to Iowa Code section 96.5-3-a.

DECISION:

The decision of the representative dated April 11 2005, reference 03, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective March 6, 2005, provided claimant meets all other eligibility requirements. This matter shall be remanded for a fact-finding interview concerning the issue of refusal of suitable work pursuant to Iowa Code section 96.5-3-a.

mdm\pjs