

**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 VELDE
1301 – 49TH ST APT 23
WEST DES MOINES IA 50266**

**A PLUS LAWN CARE
6990 NE 14TH ST
ANKENY IA 50021**

**Appeal Number: 05A-UI-01005-H2T
OC: 11-21-04 R: 02
Claimant: Appellant (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:

The claimant filed a timely appeal from the January 21, 2005, reference 04, decision that found him not able to and available for work. After due notice was issued, a hearing was held on February 14, 2005. The claimant did participate. The employer did participate through Mark Harpenau, Owner.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was laid off beginning in November 2004. On January 2, 2005, the claimant was called and asked to return to work to do snow removal. The claimant was out of town in Lincoln Nebraska from January 2, 2005 through January 6, 2005 for personal family reasons. The

claimant returned to the employer's place of business on Thursday January 6, 2005 at approximately noon. The claimant was out of town and not available for work the majority of the workweek. Since January 6, 2005 the claimant has been separated from his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work the majority of the workweek from January 2, 2005 through January 6, 2005.

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 24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant was out of town for personal reasons the majority of the workweek and is thus considered not able to and available for work during that week. Accordingly, benefits are denied from January 2, 2005 through January 8, 2005. .

DECISION:

The January 21, 2005, reference 04, decision is affirmed. The claimant is was not able to work and available for work effective from January 2, 2005 through January 8, 2005. Benefits are denied for that one-week period.

tkh\kjf

REMAND: The separation issue delineated in the findings of fact is remanded for an initial review and determination.