

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAKE A REA
Claimant

APPEAL NO: 06A-UI-11033-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/08/06 R: 04
Claimant: Appellant (4)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Blake A. Rea (claimant) appealed a representative's November 7, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits as not being able and available for work beginning October 8, 2006. After hearing notices were mailed to the claimant's last-known address of record, a telephone hearing was held on December 4, 2006. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

On October 5, 2006 the claimant declined a new assignment with his most recent employer, Temp Associates, as he had no transportation. He had been able to work his prior assignment since June 2006 even though he had no transportation because a neighbor worked for the same business client. Upon the ending of that assignment on October 5 until November 6, 2006 the claimant had no means of transportation to either get to any employer in the area or to visit prospective employers to make application for work.

On November 6, the claimant's father gave him a used vehicle with which the claimant began to make applications for work. Since that time he would have been able to accept and get to the work site if employment been offered to him.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code § 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(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

From October 8 through the week ending November 4, 2006, the claimant was not able and available for work as necessary to be eligible for unemployment insurance benefits. However, effective the week beginning November 5, the claimant became able and available for work, and therefore is eligible to receive unemployment insurance benefits from that point, if he was otherwise qualified.

DECISION:

The representative's November 7, 2006 decision (reference 02) is modified in favor of the claimant. The claimant was not able to work and available for work effective October 8, 2006. However, he became able and available for work effective November 5, 2006; the claimant is eligible to receive unemployment insurance benefits from that date, if he is otherwise qualified.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs