

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RONNIE D TRAYWICK**  
Claimant

**NESTLE USA INC**  
Employer

**APPEAL 17A-UI-01258-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/18/16  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 26, 2017, (reference 01) unemployment insurance decision that denied benefits from December 25 and 31, 2016 because he was not able and available to work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on February 23, 2017. The claimant participated and testified. The employer participated through Human Resource Generalist Blair Toby.

**ISSUE:**

Was the claimant able to work and available for work December 25 through 31, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a pouch line operator. Claimant was temporarily laid off from work for the week beginning December 25, 2016 due to a plant shutdown. Claimant had been off work due to illness the week before, but is not claiming benefits for that week. Claimant was not recalled to work until the following week, beginning January 1, 2017, but testified he would have been able to return to work had he been. Claimant was able and available to return to work the following week when the plant reopened. While claimant was off work, the week of December 25, he was paid \$370.08 in holiday pay and \$941.20 in regular vacation pay.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the period in question.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant was off work the week of December 25, 2016, not due to any fault of his own, but because he was part of a temporary layoff when the plant was shut down for the week. Had the plant been open that week, claimant would have been able and available for work. Accordingly, benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The January 26, 2017, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective December 25 through December 31, 2016. Benefits are allowed provided he is otherwise eligible.

**REMAND:**

Information was provided during the hearing indicating claimant may have received vacation and holiday pay in excess of the weekly benefit amount. The issue of whether claimant received pay in excess of the weekly benefit amount is therefore remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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