

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD JOHNSON
Claimant

APPEAL NO: 11A-UI-02444-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN PERFECTION LC LTD
Employer

OC: 08-29-10
Claimant: Respondent (1R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 22, 2011, reference 06, decision that determined the claimant was able and available for benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 24, 2011. The claimant participated in the hearing. John Hall, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was laid off from Titan Tires in August 2009. He has not worked since that time. The claimant is able and available for work at this time as he is not working and is not involved in Department Approved Training (DAT) any longer. The parties testified the employer paid the claimant \$360.00 around December 24, 2010, but the claimant did not actually perform any work for him. The claimant offered the employer the opportunity to use wood from his woodpile but that was not the reason for the check. The claimant told the employer without the check the claimant's children would not have a nice Christmas so the employer wrote him a check. He did not have much money in the way of cash so he wrote the check on his business account and took taxes from the check.

The check from the employer allowed the claimant to qualify for a second benefit year by earning \$250.00 in insured wages.

The claimant has been on DAT but only attended DMACC during the summer session of 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work but there are three issues for remand.

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".

The claimant is not working and has no medical restriction or other limitations on his employability effective December 26, 2010. Accordingly, benefits are allowed.

The issue of whether the claimant legally requalified for the second benefit year by earning \$250.00 is remanded to the Investigation and Recovery Unit.

The issue of whether there was an employer employee relationship between the employer and the claimant and whether the monies the parties reported should be considered wages for the purposes of unemployment insurance benefits is remanded to the Tax Section.

The issue of whether the claimant qualified for DAT on three separate occasions is remanded to the Claims Section for determination.

DECISION:

The February 22, 2011, reference 06, decision is affirmed. The claimant is able to work and available for work effective December 26, 2010. Benefits are allowed. The issues outlined above are remanded to the Investigation and Recovery Unit, the Tax Section, and the Claims Section.

The issue of whether the claimant legally requalified for the second benefit year by earning \$250.00 is **remanded to the Investigation and Recovery Unit**; the issue of whether there was

an employer employee relationship between the employer and the claimant and whether the monies the parties reported should be considered wages for the purposes of unemployment insurance benefits is remanded to the **Tax Section**; and the issue of whether the claimant qualified for DAT on three separate occasions is remanded to the **Claims Section** for determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs