

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

REBECCA L BANKSTON
320 MARION
WARSAW IL 62379

ADECCO USA INC
c/o TALX UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166 6736

Appeal Number: 05A-UI-01190-DWT
OC: 07/11/04 R: 04
Claimant: Appellant (2)

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 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Rebecca L. Bankston (claimant) appealed a representative's January 31, 2005 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits as of December 26, 2004, because she requested and was granted a leave of absence by Adecco USA, Inc.'s (employer) business client. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2004. The claimant participated in the hearing. Barb Hamilton, a representative with TALX, appeared on the employer's behalf with Chrissy Bell, the office supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work as of December 26, 2004?

FINDINGS OF FACT:

The employer is a temporary employment agency. On August 1, 2004, the claimant registered to work for the employer's clients. The employer assigned the claimant to a job on August 1, 2004.

The business client where the claimant works asked full-time and temporary employees if they wanted to work December 27 through 31, 2004. The claimant indicated that while she would prefer not to work, she would work if the business client needed her. After the claimant's supervisor checked, the claimant learned the business did not need for her to work this week and claimant did not. The claimant understood that some full-time employees in her department wanted to work the week of December 27 but could not because the business did not have enough work for them to do.

On January 3, the business was closed. On January 4, 2005, the claimant could not get to work because the road she drove to get to work was closed. The claimant worked as scheduled on January 5, 2005. The claimant filed claims for the weeks ending January 1 and 8, 2005.

During the claimant's current benefit year, the employer is not one of the claimant's base period employers.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits she must be able to and available for work. Iowa Code § 96.4-3. If a claimant requests and is granted a leave of absence, the claimant is not eligible for benefits during the leave of absence. 871 IAC 24.23(10).

The facts establish the claimant did not request a leave of absence. Instead, the employer's client asked every full-time and temporary employee if they wanted to work the week of December 27, 2004. Although the claimant preferred not to work, she would have worked if the business client told her she was needed. The evidence suggests that other full-time employees who wanted to work did not because the business client did not have enough work for everyone to do. Since the evidence does not establish the business client had work for the claimant to do the week of December 27, 2004, the claimant is eligible to receive unemployment insurance.

The employer's account is not subject to charge because the employer is not one of the claimant's base period employers.

DECISION:

The representative's January 31, 2005 decision (reference 02) is reversed. The claimant did not request a leave of absence for the week of December 27, 2004. The claimant was able to and available for work as of December 26, 2004. The claimant is eligible to receive benefits as of December 26, 2004, provided she meets all other eligibility requirements.

dlw/sc