

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

JUAN D DIAZ
733 W RUSHOLME ST
DAVENPORT IA 52802

ELLER CONSTRUCTION CO INC
1111 TRAILS RD
ELDRIDGE IA 52748

Appeal Number: 05A-UI-02529-H2T
OC: 11-28-04 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 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 2, 2005, reference 02, decision that denied benefits for one week from January 23 through January 29, 2005. After due notice was issued, a hearing was held on March 29, 2005. The claimant did participate. The employer did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a laborer full time beginning October 25, 2004 through date of hearing as he remains employed. The claimant worked on Monday, Tuesday and Wednesday January 24, 25 and 26. The claimant was then told he would not be needed for work on

Thursday and Friday January 27 and January 28. The claimant did work the majority of the workweek and was laid off due to lack of work for two days; January 27 and January 28.

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.

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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant worked three days during the week of January 23 through January 29 as those were the only days available for him to work. The claimant was told by Rick Eller not to report to work on January 27 and January 28 because no work was available. The claimant did work the majority of the workweek when work was available. Accordingly, benefits are allowed.

DECISION:

The March 2, 2005, reference 02, decision is reversed. The claimant is able to work and available for work effective January 23, 2005. Benefits are allowed.

tkh\pjs