

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORENZO DIAZ**

Claimant

**APPEAL NO: 09A-UI-03773-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 11/30/08**

**Claimant: Respondent (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

West Liberty Foods, LLC (employer) appealed an unemployment insurance decision dated March 5, 2009, reference 02, which held that Diaz Lorenzo (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 3, 2009. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Sarah Schneider, Human Resources Generalist. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general laborer on December 9, 2008 through February 26, 2009 when he voluntarily quit claiming he had other employment. There was no separation from employment during the time he worked for the employer. The separation issues were not included in the notice of hearing and are being remanded for further determination.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available to work.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He was employed full-time from December 8, 2008 through January 26, 2009 with no temporary separations from employment. Therefore, the claimant does not meet the availability requirements of the law and benefits are denied as of December 13, 2008.

The separation issues raised by the employer were not included in the Notice of hearing for this case, and the case will be remanded for an investigation and determination on those issues. 871 IAC 26.14(5). Another issue to be determined is whether the claimant is eligible for benefits for the one-week period ending December 6, 2008 which occurred prior to his employment with this employer.

#### **DECISION:**

The unemployment insurance decision dated March 5, 2009, reference 02, is reversed. The claimant is not eligible for unemployment insurance benefits as of December 13, 2008 because he was not able and available. The case is remanded for further determination.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs