

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP J OVIATT
Claimant

APPEAL NO. 09A-UI-18960-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 04/26/09
Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 9, 2009, reference 04, that concluded he was still employed for the same hours and wages as his contract of hire. A telephone hearing was held on January 28, 2010. The parties were properly notified about the hearing. The claimant was called for the hearing but was not available to take the call and failed to participate in the hearing. Susan Slagle participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer starting September 25. During the week of November 8, the employer did not have work in the claimant's normal job but did have other full-time work available for him for the same hours and pay. The claimant decided to work for a farmer on his own rather than perform the work the employer had available for him.

Although the claimant reopened an existing claim for benefits effective November 8, he never filed a weekly claim and went back work for the employer the next week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3. The evidence establishes the claimant was not available for work during the week of November 8 as the employer had full-time work available but the claimant chose not to work. There was some information that the claimant's employment ended in late November 2009, but this was not a matter listed on the hearing notice and will have to be decided if the claimant files for benefits again.

DECISION:

The unemployment insurance decision dated December 9, 2009, reference 04, is affirmed. The claimant is disqualified to receive unemployment insurance benefits. If circumstances have changed and the claimant believes the disqualification should be lifted, he is required to reapply for benefits and show he is eligible for benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs