

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL R DUWE
Claimant

APPEAL NO. 09A-UI-02146-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIRON CONSTRUCTION CO INC
Employer

**OC: 12/21/08 R: 03
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Paul Duwe, filed an appeal from a decision dated February 4, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 4, 2009. The claimant participated on his own behalf. The employer, Miron Construction, participated by Project Superintendent Rick Hanna and Project Foreman Scott Ballard.

ISSUE:

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

FINDINGS OF FACT:

Paul Duwe began employment with Miron Construction in May 2003. He filed a claim for unemployment benefits with an effective date of December 21, 2008, indicating he was still working. For the week of December 21 through 26, 2008, the work crew was scheduled only the first three days. Mr. Duwe only worked on Monday and was no-call/no-show for the other two days. Earlier he had asked Project Superintendent Rick Hanna to lay him off for that week, but the request was denied due to the work load.

When Mr. Duwe returned to work on Monday, December 29, 2008, Mr. Hanna asked him why he had not been at work the previous week and the claimant said it was due to “personal issues.” When asked why he had not called, he said his phone was broken. When asked why he did not use his wife’s phone, he did not have an answer. At the appeal hearing, Mr. Duwe stated he had not gone to work because he thought the weather was too bad to work outside, although no one on behalf of the employer had contacted him to say work would not be done on either of those days, and he did not attempt to contact the project foreman or superintendent to get confirmation the weather had stopped the work.

REASONING AND CONCLUSIONS OF LAW:

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 did not make himself available to his regular employer for regular work hours during the week ending December 27, 2008. He gave conflicting reasons as to why he did not come to work or notify the employer during that time, but it is undisputed work was available to him that he declined to perform. Under the provisions of the above Administrative Code section, he is not considered eligible for benefits during that week.

DECISION:

The representative's decision of February 4, 2009, reference 01, is affirmed. Paul Duwe is not eligible for benefits for the one-week period ending December 27, 2008.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw