

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSH T CLOUD**

Claimant

**JENSEN BUILDERS LTD**

Employer

**APPEAL 19A-UI-01418-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/13/19**

**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 11, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2019. Claimant participated personally and was represented by Jon S Geyer. Employer participated through director of human resources Tom Nelson.

**ISSUES:**

Is the claimant eligible for partial unemployment?  
Is the claimant able to work and available for work effective January 13, 2019?  
Is the claimant still employed at the same hours and wages?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 7, 2018. Claimant works for employer as a full-time concrete laborer.

On January 3, 2019, claimant had an appointment with a neurologist. The neurologist diagnosed claimant with carpal tunnel syndrome and referred him to an orthopedic surgeon.

Claimant was absent from work on January 3, 4, and 7, 2019.

On January 8, 2019, claimant returned to work. Claimant presented superintendent Brian Harriman and safety and human resource assistant Joel Rivera with a doctor's note excusing claimant from work from January 4 through 7, 2019, and restricting claimant to light duty work until a plan is established with an orthopedic doctor. Harriman and Rivera stated claimant could not return to work the next day with those restrictions. Rivera informed human resource director Tom Nelson about the note. Nelson asked if claimant was alleging a work-related medical condition and Rivera stated he believed so. Nelson told Rivera to instruct claimant to call

Nelson about getting him to a company doctor. Rivera did so. Claimant told Rivera that his phone would be shut off soon due to lack of finances.

Nelson called claimant on January 10, 11, 14, and 15, 2019. Claimant did not answer his phone or receive the messages because his phone was shut off due to his failure to pay the bill. Nelson left voice messages asking claimant to call him as soon as possible.

On January 16, 2019, Nelson sent claimant a text message stating that he had left him messages and that if he did not hear from claimant he would classify him as having no-call/no-show absences and would be terminated. Claimant called Nelson back the same day. Nelson told claimant to report to work the next day so he could see a doctor hired by employer's workers' compensation carrier. Claimant stated he would not return to work until speaking with his attorney.

On January 22, 2019, claimant saw a doctor affiliated with employer's workers' compensation carrier who diagnosed the condition as work-related. On January 23, 2019, claimant returned to work and was assigned light duty work.

Claimant filed a weekly claim for one week of unemployment insurance benefits—the one week ending January 19, 2019.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not available for work during the one week ending January 19, 2019.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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".

The only week in question in this case is the one week ending January 19, 2019. The effective date of claimant's claim for unemployment insurance benefits is January 13, 2019. The only week for which claimant filed a continued weekly claim for benefits is the one week ending January 19, 2019. Claimant later returned to work and is now receiving weekly workers' compensation benefits, so that is the only week at issue here.

During that week, claimant was totally unemployed. He did not work any hours. Therefore, he must be able to and available for work. Claimant had a work injury, but was able to perform light duty work. Employer was willing to accommodate the light duty restriction. Claimant was instructed to call Nelson about seeing the company doctor, but did not do so. The administrative law judge finds Nelson's testimony credible that he tried calling claimant on January 10, 11, 14, and 15, 2019. The administrative law judge also finds claimant's testimony credible that his phone was turned off. As soon as Nelson got in touch with claimant, he offered claimant the opportunity to return to work immediately. The only reason that claimant did not work during the one week ending January 19, 2019, is because claimant did not communicate with Nelson. Claimant limited his availability for work by limiting methods by which employer could communicate with him. Claimant could have stopped in at the shop when he knew his phone was turned off, but he chose not to do so. Employer had work available for claimant.

Claimant failed to establish he was available for work during the one week ending January 19, 2019. Therefore, benefits are denied.

**DECISION:**

The February 11, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work during the one week ending January 19, 2019. Benefits are denied.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Des Moines, Iowa 50319-0209  
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Decision Dated and Mailed

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