

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT R HOHENSHELL**  
Claimant

**APPEAL NO. 09A-UI-17297-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APEX CONSTRUCTION COMPANY INC**  
Employer

**Original Claim: 10/11/09  
Claimant: Respondent (2/R)**

Section 96.4-3 – Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer appealed a representative's November 5, 2009 decision (reference 01) that held the claimant eligible to receive benefits as of October 11, 2009, because he was on a short-term layoff. A telephone hearing was held on December 16, 2009. The claimant participated in the hearing with his witness, Jason Armstrong. Steve Schmidt, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant able to and available for work from October 11 through 31, 2009?

**FINDINGS OF FACT:**

The claimant works for the employer. The employer had work for the claimant to do in October. In October, the claimant and his family became ill with the H1N1 flu. The claimant asked his supervisor if he could take a temporary leave of absence while he and his family recuperated. The claimant's supervisor gave the claimant a temporary leave of absence.

The claimant established claim for benefits during the week of October 11. He filed claims for the weeks ending October 17 through 31, 2009. On November 2, the claimant had recuperated from the flu and returned to work.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, he must be able to and available for work before he is eligible to receive benefits. Iowa Code § 96.4-3. The law presumes a claimant is voluntarily unemployed when he requests and is granted a leave of absence. 871 IAC 24.23(10).

Since the claimant's supervisor granted him a short-term leave of absence for health-related issues, the claimant is not legally entitled to receive benefits while he was on a leave of

absence. The claimant was on the leave of absence because he was ill or he was taking care of family members who were ill. As a result, he was not able to or available for work as of October 11 through October 31, 2009. The claimant is not eligible to receive benefits for the weeks ending October 17 through October 31, 2009.

The issue of overpayment is remanded to the Claims Section.

**DECISION:**

The representative's November 5, 2009 decision (reference 01) is reversed. The claimant is not eligible to receive benefits October 11 through 31, 2009, for two reasons. First, a claimant is not considered voluntarily unemployed when he requests and is granted a leave of absence. Next, the claimant was ill or taking care of ill family members from October 11 through 31 and was not able to or available for work during this time. The issue of overpayment for the weeks ending October 17 through 31, 2009, is remanded to the Claims Section to address.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw