

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLAN J KLEIN
Claimant

APPEAL NO: 09A-UI-01058-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUEGRASS MARINE LLC
Employer

OC: 11/30/08 R: 04
Claimant: Appellant (2)

Section 96.4-3 – Availability for Work

STATEMENT OF THE CASE:

Allan J. Klein (claimant) appealed a representative's January 14, 2009 decision (reference 01) that concluded he was not eligible to receive benefits from November 30 through December 28, 2008, because he restricted his availability to work for Bluegrass Marine LLC (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2009. The claimant participated in the hearing. Steve Durbin 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:

Did the claimant unduly restrict his availability for work November 30 through December 28, 2008?

FINDINGS OF FACT:

The claimant works as an on-call pilot boat driver for the employer. The claimant operates a boat on the Mississippi or Illinois Rivers for the employer. As an on-call or part-time employee, the claimant calls the employer on a regular to basis to find out if the employer has any work or the employer contacts the claimant when there is a boat that needs a captain.

The claimant established a claim for benefits during the week of November 30, 2008. The claimant has filed weekly claims since November 30, 2008.

On or about December 16, the employer talked to the claimant about piloting a boat on a two or three week trip. The claimant declined this trip because he wanted to be home on Christmas Day. If the claimant had accepted the trip, he would not be home on Christmas Day.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a clam for benefits, he must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not available for work when he is not

willing to work during the hours in which suitable work is available. 871 IAC 24.23(16). The claimant declined a job the employer had available because the job required him to work and be away from home on Christmas Day. This was the only day the claimant was not available to work. Since the claimant was only unavailable to work one day, he established that he had not unduly restricted his availability to work. Therefore, the claimant is eligible to receive benefits November 30 through December 28. The claimant remains eligible to receive benefits as of December 28, 2008.

DECISION:

The representative's January 14, 2009 decision (reference 01) is reversed. The claimant did not unduly restrict his availability for work. The claimant is eligible to receive benefits November 30 through December 28. The claimant remains eligible to receive as of December 28, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs