

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L MAXWELL**  
Claimant

**APPEAL NO. 08A-UI-00515-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN BUILDING MAINTENANCE  
COMPANY OF KENTUCKY INC**  
Employer

**OC: 10/14/07 R: 02**  
**Claimant: Appellant (4)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Michael Maxwell, filed an appeal from a decision dated January 9, 2008, reference 03. The decision found him ineligible from receiving unemployment benefits because he did not report as directed to Iowa Workforce Development. After due notice was issued, a hearing was held by telephone conference call on January 30, 2008. The claimant participated on his own behalf. The employer, American Building Maintenance Company of Kentucky, Inc. (ABM), did not provide a telephone number where a witness could be contacted and did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Michael Maxwell filed a claim for unemployment benefits with an effective date of October 14, 2008. He was not able to work until released by his doctor on October 25, 2007, which encompasses the first week of his benefits ending October 20, 2007, and most of the second week ending October 27, 2007.

**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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant was not able and available for work for the first two weeks of his benefit year ending October 27, 2007, because he was ill. Under the provisions of the above Administrative Code section he is not eligible for benefits during that time.

**DECISION:**

The representative's decision of January 9, 2008, reference 03, is modified in favor of the appellant. Michael Maxwell was not eligible for benefits for the two-week period ending October 27, 2007, because he was not able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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