

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY JENKINS**

Claimant

**APPEAL NO. 090-UI-07041-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DELANEY CONCRETE  
CONSTRUCTION COMPANY INC**  
Employer

**Original Claim: 01/13/08  
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Terry Jenkins (claimant) appealed a representative's January 5, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he could not work for Delaney Concrete Construction Company (employer) due to injury. A hearing was held on June 2, 2009, following due notice pursuant to Remand Order of the Employment Appeal Board dated May 7, 2009. The claimant participated personally. The employer participated by Brad Sevcik, Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2006, as a full-time laborer. The claimant suffered a work-related injury on May 8, 2008. He was released to perform light-duty work on October 22, 2008, and the employer had work available starting October 27, 2008. On October 29, 2008, the claimant notified the employer that he could not work due to a non-work-related condition. The claimant did not request a leave of absence.

The claimant had surgery and was released to return to work without restrictions on December 15, 2008. The claimant called the employer to ask for the fax number, but the employer never received a fax from the claimant. The claimant thought he faxed the employer his release to return to work. The employer never heard from the claimant again. The claimant asked a former co-worker if there was work available and the former co-worker said there was none. This was not the case. Continued work was available had the claimant supplied a release and presented himself for work.

The claimant filed for unemployment insurance benefits with an effective date of January 13, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant was not able and available for work from October 27 through December 15, 2008.

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.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was ill and unable to work from October 27 through December 15, 2008. He is considered to be unavailable for work during that period. The claimant is disqualified from receiving unemployment insurance benefits from October 27, 2008, through December 15, 2008, due to his unavailability for work.

**DECISION:**

The representative's February 25, 2009 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits from October 27 through December 15, 2008, because he was not available for work with the employer.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw