

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYLON K STUTZMAN
Claimant

APPEAL NO. 09A-UI-16696-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARKER COMPANY LTD
Employer

**Original Claim: 10/26/08
Claimant: Respondent (5)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Barker Company, Ltd. (employer) appealed a representative's October 28, 2009 decision (reference 03) that concluded Waylon K. Stutzman (claimant) was qualified to receive unemployment insurance benefits for a week of benefits in October 2009. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on December 11, 2009. The employer failed to respond to the hearing notice and provide a telephone number at which a witness could be reached for the hearing and did not participate in the hearing. The claimant responded to the hearing notice and indicated that he would participate in the hearing. When the administrative law judge contacted the claimant for the hearing, he agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant established an unemployment insurance benefit year effective October 26, 2008. He reopened his claim periodically during his benefit year and filed weekly claims seeking partial unemployment insurance benefits during weeks he was not fully employed. In October 2009 he reopened his claim to file a weekly claim for the week ending October 10, 2009. That week he was unable to work on Monday, October 5, and Tuesday, October 6, due to a knee injury. He did work Wednesday, October 7, and Thursday, October 8. The employer did not have work for him on Friday, October 9. As a result, the claimant filed a weekly claim seeking partial benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. Determinations of availability are reviewed in the context of the entire week at question. Where an employee is able and available for work the majority of the regular work week, he is deemed to be able and available for purposes of unemployment insurance benefit eligibility. 871 IAC 24.23(30). The claimant here was able and available for work the majority of the regular work week. Benefits are allowed, if the claimant is otherwise eligible.

The decision is modified to the extent that the decision refers to the wrong week; the week at question is the week ending October 10, 2009.

DECISION:

The representative's October 28, 2009 decision (reference 03) is modified with no effect on the parties. The claimant was able to work and available for work the week ending October 10, 2009, and was eligible to receive unemployment insurance benefits for that week, if he was otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw