

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
RICHARD L JACOBY Claimant	APPEAL NO. 09O-UI-00250-CT
STARCO INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 08/312/08 R: 02 Claimant: Respondent (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Starco, Inc. filed an appeal from a representative's decision dated October 22, 2008, reference 02, which allowed benefits to Richard Jacoby effective August 31, 2008 on a finding that he satisfied the availability requirements of the law. After due notice was issued, a hearing was held by telephone on November 12, 2008. The decision of the administrative law judge, dated November 13, 2008, affirmed the prior decision.

The issue of Mr. Jacoby's availability was addressed in the same hearing as the issue of his separation from Starco, Inc. On November 13, 2008, the administrative law judge issued a decision that modified the separation decision. The decision allowed benefits effective November 9, 2008. The employer appealed the decision concerning the separation issue (08A-UI-09943-HT). Neither party appealed the decision concerning the availability issue (08A-UI-09944-HT).

On December 31, 2008, the Employment Appeal Board affirmed the decision regarding Mr. Jacoby's separation from Starco, Inc. The Board remanded the matter on the question of his availability for work.

ISSUE:

At issue in this matter is whether the question of Mr. Jacoby's availability has been previously adjudicated.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Judge Bonny Hendricksmeier issued a determination on November 13, 2008 holding that Mr. Jacoby satisfied the availability requirements of Iowa Code section 96.4(3) from May 6 until November 7, 2008. The issue of his availability arose because he had been unable to work as a truck driver for Starco, Inc. beginning May 8, 2008 due to a seizure. He was released by his doctor to resume driving November 7, 2008. There was no issue of his availability after November 7.

REASONING AND CONCLUSIONS OF LAW:

The decision made by Judge Hendricksmeier on November 13, 2008 regarding Mr. Jacoby's availability became final in the absence of any appeal by either him or the employer. It appears that the Employment Appeal Board was not aware of this decision when the matter was remanded for a hearing on the availability issue. Both parties were contacted regarding the remand hearing scheduled for January 22, 2009. Since the matter of Mr. Jacoby's availability had already been adjudicated and the determination had become final, neither party saw the need for the hearing ordered by the Employment Appeal Board.

DECISION:

The representative's decision dated October 22, 2008, reference 02, is hereby affirmed as provided in the decision issued by Judge Hendricksmeier on November 13, 2008.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs