

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DREW MERGENS

Claimant

APPEAL NO. 09A-UI-02727-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESLINE PLASTIC PIPE CO INC

Employer

**Original Claim: 11/16/08
Claimant: Respondent (1)**

Section 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The employer, Cresline Plastic Pipe Company, Inc. (Cresline), filed an appeal from a decision dated February 18, 2009, reference 01. The decision allowed benefits to the claimant, Drew Mergens. After due notice was issued a hearing was held by telephone conference call on March 17, 2009. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Plant Manager Ralph Mericle.

ISSUE:

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

FINDINGS OF FACT:

Drew Mergens began employment with Cresline on March 29, 1999, and remains employed as of the date of the hearing as a full-time utility person.

Mr. Mergens was placed on layoff on November 16, 2008, and filed a claim for unemployment benefits effective the same date. He received two weeks of vacation pay, which he declared on his weekly claims for November 22 and 29, 2008, and received no unemployment benefits as a result. He filed his weekly claim for every week ending January 17, 2009, and was recalled to work January 19, 2009.

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".

The claimant was on layoff and properly declared his vacation pay, although the employer did not note such pay on its protest. He ceased filing for benefits when he was recalled to work. He was available to his employer throughout the layoff.

DECISION:

The representative's decision of February 18, 2009, reference 01, is affirmed. Drew Mergens is eligible for benefits, provided he is otherwise qualified.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw