

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON TASTO**

Claimant

**APPEAL NO. 09A-UI-03074-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHAMBERLAIN BROS LUMBER INC**

Employer

**Original Claim: 02/24/08**

**Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Jason Tasto (claimant) appealed an unemployment insurance decision dated February 19, 2009, reference 03, which held that he was not eligible for unemployment insurance benefits for the one-week period ending January 24, 2009. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 23, 2009. The claimant participated in the hearing. The employer participated through Bev Grabill, Bookkeeper. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to work for the one-week period ending January 24, 2009.

**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 employed as a full-time general laborer from October 10, 2008 through January 21, 2009. On that date, he was told he would be laid off at the end of the week on January 23, 2009. The claimant elected to leave at that time so he could find employment. Continuing work was available for the week ending January 24, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). Even though continuing work was available for the entire week ending January 24, 2009, the claimant elected to leave on January 21, 2009. The claimant does not meet the availability requirements of the law for week ending January 24, 2009 and is not entitled to benefits that week.

**DECISION:**

The unemployment insurance decision dated February 19, 2009, reference 03, is affirmed. The claimant is not eligible for unemployment insurance benefits for the one-week period ending January 24, 2009.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw