

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID THOMAS

Claimant

APPEAL NO: 07A-UI-02178-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONCEPT BUILDERS LTD

Employer

**OC: 02-11-07 R: 01
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 28, 2007, reference 01, decision that allowed benefits to the claimant for the week ending February 17, 2007. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 20, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Darci Richter, Office Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant was still employed with the employer for the same hours and wages as contemplated in the original contract of hire for the week ending February 17, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a full-time laborer for Concept Builders beginning October 23, 2006. During the week ending February 17, 2007, the crew did not work February 14, 15, 16 or 17, 2007, because of weather conditions. He returned to work the following week until resigning February 23, 2007, to accept work elsewhere.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able and available for work during the week ending February 17, 2007.

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".

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant did not work February 14 through 17, 2007, because of severe weather conditions. He was, however, able and available for work during his regular hours that week. Consequently he is eligible for benefits for that week.

DECISION:

The February 28, 2007, reference 01, decision is affirmed. The claimant was able and available for his regular work hours the week ending February 17, 2007, and is eligible for benefits for that week, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs