

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN D KUEHN**

Claimant

**APPEAL NO. 12A-UI-01177-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELLISON CONSTRUCTION**

Employer

**OC: 12/18/11**

**Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Ellison Construction, filed an appeal from a decision dated January 26, 2012, reference 02. The decision allowed benefits to the claimant, Justin Kuehn. After due notice was issued, a hearing was held by telephone conference call on February 28, 2012. The claimant participated on his own behalf. The employer participated by Secretary Kathy Ellison.

**ISSUE:**

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

**FINDINGS OF FACT:**

Justin Kuehn began employment with Ellison Construction on September 12, 2011, as a full-time truck driver. Every weekend, the claimant was to call the employer, or the employer would call him, to discuss the work available for the coming week.

On December 21, 2011, Secretary Kathy Ellison told the claimant there was a “big job” starting on January 3, 2012, which would most likely last the entire month. Mr. Kuehn was no-call/no-show after his last day of work on December 23, 2011.

He maintained he attempted to call the employer several times but did not call Ms. Ellison’s cell phone, which he usually called to make arrangements for work or to have someone pick up his check for him. Whichever number he might have called, he never left a message to identify himself or ask about work. He does not live far from the place of business, but never stopped by the office to talk with someone.

Justin Kuehn has received unemployment benefits since filing a claim with an effective date of December 18, 2011.

**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".

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 knew work was going to be available starting January 3, 2012, but did not come to work or make a diligent effort to contact the employer. He did not leave messages when he called and did not stop by the business, but simply waited for the employer to contact him. Work was available throughout the month of January 2012. The administrative law judge is not convinced the claimant was unaware of how to contact the employer more effectively, as he did so whenever he wanted to make arrangements for the pickup of his paycheck.

The record establishes the claimant did not make a reasonable effort to make himself available to the employer for his usual work. He is therefore ineligible for unemployment benefits.

**DECISION:**

The representative's decision of January 26, 2012, reference 02, is reversed. Justin Kuehn is not able and available for work and benefits are denied. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw