

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT A BUTLER**  
Claimant

**APPEAL NO: 13A-UI-13397-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY CONCRETE COMPANY INC**  
Employer

**OC: 03/10/13**  
**Claimant: Appellant (2/R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Robert Butler (claimant) appealed a representative's November 27, 2013, decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work with Kelly Concrete (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 3, 2014. The claimant participated personally. The employer participated by Caitlin Shemwell, Office Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from October 21, to November 4, 2013. The claimant was unable to work due to a knee injury from November 5 to November 10, 2013. The employer consented to his absence. The claimant returned to work on November 11, 2013, and no work was available because the employer was laying off workers. The claimant reopened his claim for benefits on November 17, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is able and available for work as of November 17, 2013.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work without restrictions by his physician on November 11, 2013. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

The issue of the claimant's separation from employment is remanded for determination.

**DECISION:**

The representative's November 27, 2013, decision (reference 04) is reversed. The claimant is qualified to receive unemployment insurance benefits because he is able and available for work with the employer. The issue of the claimant's separation from employment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs