

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM T REXFORD**  
Claimant

**APPEAL NO. 10A-UI-14543-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A & B WELDING & MFG**  
Employer

**OC: 11/22/09**  
**Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(6) – Unable to Perform Work/Injury  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 19, 2010, reference 03, that held the claimant was available and medically able to work effective October 10, 2010, and that allowed benefits. A telephone hearing was held on December 8, 2010. The claimant participated. Tanya Kiel, Office Manager, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time general laborer from August 1, 2006 to about July 2, 2010. The claimant was injured in a motorcycle accident on July 3 on his own personal time. The claimant notified his employer he was under doctor's care and he would be off work for a period of time. The claimant broke some bones in his right wrist/hand and it was placed in hard cast for one month, and then a soft cast for a month. The department issued a decision on August 6, 2010, reference 01, that held the claimant was not eligible for benefits due to an employment separation based on a non-job-related injury on July 4, 2010. There was no appeal from this decision.

On October 12, the claimant provided to the employer a certificate to return to work for light duty with limited right hand use. The employer would not allow the claimant to return, because he could not perform all of his regular job duties and it had no light-duty work. The claimant returned to Dr. Eckstrom with a request that he be released to return to work without restriction, and so he did. Claimant went back to the employer with the second release.

The employer noted a conflict with the doctor releases, so it sought a clarification from Dr. Eckstrom on October 22. Ekstrom wrote a letter to the employer dated October 26 affirming

the restrictions (work) he imposed in his first doctor note of October 12 with light duty for the right hand. He also limited carrying and lifting to 100 pounds. Once a work hardening program was completed in about two months, Eckstrom anticipated claimant could return to work without restrictions. Eckstrom did not copy claimant on the letter.

Claimant was unaware of the Eckstrom October 26 letter and evaluation to the employer. The claimant is seeking treatment and evaluation from another doctor. The claimant has received no written communication from the employer that he has been terminated and he expects to return to it once he has been released without restriction. The employer is willing to take him back.

The claimant has received unemployment benefits on his current claim.

### **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 administrative law judge concludes that the claimant is not able to perform work due to a non-job-related injury effective October 10, 2010, because he has not received an unrestricted medical release to return to work by Dr. Eckstrom.

When the employer received conflicting certificates to return to work, it acted in a reasonable manner by seeking a clarification. Dr. Eckstrom's October 26 letter provides a more detailed explanation regarding his position that claimant is restricted to light duty with limited right hand use, which means claimant is restricted from performing all of his job duties. He also added a weightlifting and carrying restriction. While claimant is not happy with this evaluation, the employer has a right to rely upon it in withholding employment until claimant is able to provide an unrestricted medical release to return to work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits on his unemployment claim, this issue is remanded to claims for an investigation and decision.

**DECISION:**

The department decision dated October 19, 2010, reference 03, is reversed. The claimant is not able to perform his regular work due to a non-job-related injury effective October 10, 2010. Benefits are denied. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw