

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**HUGH H HOFFMAN
519 N BROWN ST
MOUNT PLEASANT MI 48858**

**BARR NUNN TRANSPORTATION INC
ATTN KATHY
1803 BURROAK BLVD
PO BOX 518
GRANGER IA 50109**

**Appeal Number: 05A-UI-04375-HT
OC: 03/27/05 R: 12
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant, Hugh Hoffman, filed an appeal from a decision dated April 20, 2005, reference 01. The decision found him ineligible from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 10, 2005. The claimant participated on his own behalf. The employer, Barr-Nunn, participated by Payroll Supervisor Mona Ripple. Tracy Reed observed the proceedings but did not offer testimony.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Hugh Hoffman began employment with Barr-Nunn

on July 2, 2002. He was a full-time over-the-road truck driver . Mr. Hoffman was prohibited from driving due to high blood sugar in March 2005 by the employer's physicians. The employer was notified and the claimant was advised to return to his home and be treated by his family doctor.

Mr. Hoffman returned to Michigan and the employer sent him paperwork to fill out to apply for family medical leave. He was granted the leave beginning March 14, 2005 and it is scheduled to end June 6, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is ineligible for benefits. The judge concludes he is.

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(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant was prohibited from driving due to a non-work-related medical condition and then availed himself of the opportunity to take FMLA while the medical problem was addressed. Under the provisions of the above Administrative Code section, he is not considered eligible for benefits.

DECISION:

The representative's decision of April 20, 2005, reference 01, is affirmed. Hugh Hoffman is not able and available for work and is ineligible to receive unemployment benefits.

bgh/tjc