

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLY J OSTRANDER
Claimant

APPEAL NO. 08A-UI-00765-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEHRING CONSTRUCTION INC
Employer

OC: 12/16/07 R: 02
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 14, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 6, 2008. Claimant participated. Employer participated through Kimberly Nehring.

ISSUE:

The issue is whether claimant is able to and available for work the one week ending January 12, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant remains employed for Nehring Construction. During the week from January 6, 2008 through January 12, 2008 claimant sustained a personal injury when he slipped and fell. He bruised his tail bone so he did not see a doctor but was unable to work that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work the one week ending January 12, 2008.

Iowa Code § 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 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as claimant removed himself from work due to a non-work-related injury without a medical directive, he is not considered able to or available for work for the one week ending January 12, 2008.

DECISION:

The January 14, 2008, reference 02, decision is affirmed. The claimant was not available for work and benefits are denied for the one week ending January 12, 2008.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css