

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON E STICKLEY**

Claimant

**APPEAL NO. 09A-UI-08518-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARTIN BROS DIST CO INC**

Employer

**OC: 01/11/09**

**Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 5, 2009, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 30, 2009. Employer participated by Shawna Olson. Claimant was not at the number he left with the Appeals Section. The claimant called in late, 9:55 a.m. and stated he misread the notice and thought the hearing was at 10:00 a.m. This was not deemed to be good cause and the hearing was not reopened.

**ISSUE:**

The issue in this matter is whether 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:

Claimant was injured in a non-work-related incident and was unable to work pursuant to medical advice from a treating physician. He has received a full medical release from the treating physician and returned to work for his employer on June 2, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work the six-week period ending May 30, 2009.

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 the medical condition was not work related and the treating physician has not released the claimant to return to work with or without restriction, the claimant has not established his ability to work. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant is released to perform his full work duties, he is not considered able to or available for work.

**DECISION:**

The representative's decision dated June 5, 2009, reference 04, is affirmed. The claimant is not able to work and available for work for the six-week period ending May 30, 2009. Benefits are withheld until such time as the claimant obtains a full medical release to return to work and is otherwise eligible.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/pjs