

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A STEWART
Claimant

APPEAL NO. 100-EUCU-00090-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE PAVING CORPORATION
Employer

OC: 01/25/09
Claimant: Appellant (2)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Michael A. Stewart filed a timely appeal from an unemployment insurance decision dated November 16, 2009, reference 05, that denied benefits to him effective October 18, 2009 upon a finding that he was unable to work due to injury. After due notice was issued, a telephone hearing was held December 21, 2009 with Mr. Stewart participating. The employer, Hawkeye Paving Corporation, did not participate in the hearing. An administrative law judge decision was issued on December 29, 2009, affirming the earlier decision. The claimant appealed the decision to the Employment Appeal Board which, in an order dated February 12, 2010 remanded the matter for further proceedings. With the consent of the parties, a telephone hearing was held February 25, 2010 with Mr. Stewart participating. Secretary/Treasurer Teresa Perkins participated for the employer. Claimant Exhibit A was admitted into evidence.

ISSUES:

Is the claimant medically able to work?

Does the employer have work available for the claimant?

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: Michael A. Stewart's physician released him to return to work without restriction on January 12, 2010. He returned to his employer, Hawkeye Paving Corporation, but was told that the company had no work available, even for individuals with more seniority than Mr. Stewart.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant is now eligible to receive unemployment insurance benefits. 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".

The evidence in this record establishes to the satisfaction of the administrative law judge that Mr. Stewart was released by his physician without restriction on Tuesday, January 12, 2010. The evidence also establishes that Mr. Stewart's employer has no work for him as of that date. Therefore, the administrative law judge concludes that benefits should be allowed as of the week of January 10, 2010 since the claimant was medically able to work for the majority of that workweek.

DECISION:

The unemployment insurance decision dated November 16, 2009, reference 05, is reversed. The claimant is entitled to receive unemployment insurance benefits effective January 10, 2010, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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