

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRANT HUBBARD

Claimant

APPEAL NO: 13A-UI-10299-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNNE DEVORE

MILLHISER-SMITH AGENCY INC

Employer

OC: 03/24/13

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 29, 2013, reference 02, decision that determined he was not able and available for work. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 10, 2013. The claimant participated in the hearing. Lynne Devore, CEO/Senior Vice-President, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from this employer March 25, 2013. The employer has been watching his Linked In account which shows him working as a "senior consultant" for T. Hubbard Consulting, which is his wife's business. On the claimant's page he states he is an enterprise risk manager, insurance consultant, insurance program developer, salesman, and sales manager for T. Hubbard Consulting. The claimant indicated he began in that position in August 2011 and remains in that job through present. The claimant does not show his employment with this employer on his Linked In page.

The claimant has a previous employer, Ascension Insurance (d/b/a Pan American Insurance Agency) that he did not list when applying for unemployment benefits. He worked for Ascension as an employee from January 29, 2010 through September 1, 2011, at which time he became an independent contractor.

The employer questions whether the claimant is working for his wife's consulting business, whether he is devoting his time and efforts to becoming self-employed and whether he is able and available for work as required for eligibility for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

While the claimant demonstrated that he is not a truthful individual and admitted lying about himself on, at the very least, a professional online networking organization, there is not enough evidence to conclude the claimant is devoting his time and efforts to becoming self-employed. Given his lack of veracity, the administrative law judge concurs with the employer that it is difficult to believe that while he touts his position with "T. Hubbard Consulting," he has not received any pay from that company and the claimant was definitely not forthcoming about his position with Ascension Insurance. According to his contract with Ascension, his actual employment with it ended September 1, 2011, which he neglected to mention when questioned during the appeal hearing. He became a contract employee at that time. That employer, however, is not a base period employer. Consequently, its account is not subject to charge any longer. Accordingly, even though the administrative law judge joins the employer in doubting the claimant's sworn testimony, there is not enough evidence to find he is devoting his time and efforts to becoming self-employed and therefore, he is considered able and available for work.

DECISION:

The August 29, 2013, reference 02, decision is reversed. The claimant is able to work and available for work effective May 12, 2013. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs