

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL A STEWART**  
Claimant

**APPEAL NO. 09A-UI-17274-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWYKEYE PAVING CORPORATION**  
Employer

**OC: 01/25/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 16, 2009, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 21, 2009. Claimant participated. Although the employer did respond to the hearing notice and provided the name and telephone number of a representative, when that number was called a message indicated that the business was closed for the holidays. The employer did not participate in the hearing. The record consists of the testimony of Michael Stewart.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a truck driver for the employer. He has a contested claim for worker's compensation benefits. This claim has been denied by the employer's workers' compensation insurance carrier. The claimant had a two-pound lifting restriction on his left arm from his treating physician. That restriction has not been lifted. The claimant did work some light duty for the employer while the worker's compensation claim was investigated. The last day of work was September 30, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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(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.

The administrative law judge concludes that the claimant is not able and available for work due to injury effective October 1, 2009, and benefits are denied until he can provide a medical release for unrestricted work with a return to employment.

The worker's compensation claim has been denied by the employer's workers' compensation insurance carrier. The claimant did not provide any evidence, other than his testimony, that he had a work-related injury. The claimant's testimony alone is unreliable. The burden of proof is upon the claimant to present to the agency that he has an unrestricted medical release to return to work for the employer in his position as a truck driver in order to remove the disqualification in this case. The claimant has a two-pound lifting restriction on his left arm, which strongly indicates that the claimant cannot drive a truck.

#### **DECISION:**

The decision of the representative dated November 16, 2009, reference 05, is affirmed. The claimant had not been able and available for work since establishing his claim for benefits. Accordingly, the claimant is not eligible for benefits.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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