

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER A HAGEMAN
Claimant

APPEAL NO. 08A-UI-01351-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOELLER TRUCKING INC
Employer

OC: 01/06/08 R: 01
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 5, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 25, 2008. Claimant participated and was represented by Leif Erickson, Attorney at Law. Employer participated through Ross Moeller. Claimant's Exhibits 1 through 6 were received.

ISSUE:

The issue is whether claimant is able to and available for work effective January 6, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time over-the-road driver. On May 30, 2007, he had a work-related accident and injured his head, neck, and left arm. He was off work from May 30 through December 10 and was released without restriction at maximum medical improvement (MMI) by Huy Trihn, M.D., employer's workers' compensation carrier's physician. (Claimant's Exhibit 1) On December 11, 2007, claimant's personal treating physician, D.M. TanCreti, M.D., released claimant to work with light duty restrictions and indicated the need for additional treatment, including neck surgery. (Claimant's Exhibit 2) Grant Shumaker, M.D., neurosurgeon, also allowed claimant to work light duty pending surgery for bulging of multiple cervical discs. (Claimant's Exhibits 4 and 5) While claimant does not sleep well and takes many aspirin per day, he is looking for work at the casinos and in the electronics field.

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 § 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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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 injury was work-related and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated February 5, 2008, reference 03, is reversed. The claimant is able to work and available for work effective January 6, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw