

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R KADINGER
Claimant

APPEAL NO. 09A-UI-02501-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAIL CONTRACTORS OF AMERICA INC
Employer

OC: 01/04/09
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 13, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 19, 2009. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant is able to and available for work effective January 4, 2009.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed full-time as a driver and was in a motorcycle accident on or about January 6, 2009 and dislocated his right thumb. He is left-handed. He was treated at the emergency room, his thumb was relocated, he was given a thumb splint, and referred to a follow-up appointment. On January 9, 2008, he was released to work with restrictions of thumb movement and was directed to wear a splint. He was released without restriction on January 21, 2009 by the referral doctor but Dr. Grundberg who had treated him for an earlier diagnosis of work-related carpal tunnel on his right hand kept him off duty until January 30, 2009. He had been released to return to work on December 30, 2008 from the carpal tunnel surgery on the same hand. He returned to work on January 31, 2009 after both doctors said he could return to work without restriction.

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 from January 4 through January 31, 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 did not release the claimant to return to work without restriction until January 30, 2009, 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 February 13, 2009, reference 01, is affirmed. The claimant was not able to work and available for work for the period ending January 31, 2009. Benefits are withheld.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css