

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUINTEN D HOFER
Claimant

APPEAL NO. 09A-UI-02434-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINT RESOURCES INC
PRI
Employer

Original Claim: 12/07/08
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 9, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 10, 2009. Claimant, who is also the company's owner, participated. Employer participated through claimant, Quinten Hofer, company owner. The administrative law judge took judicial notice of the administrative record (19 pages of documents from the fact-finding interview).

ISSUE:

The issue is whether claimant is able to and available for work effective December 7, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: On April 7, 2008, while driving to a sales call for his company, claimant was the victim of a drunk driver in an automobile accident. On December 9, 2008 his treating physician, Jason Booth, M.D., wrote that he had been diagnosed with post concussion syndrome and post traumatic stress disorder and "due to his injury and the resultant diagnoses as above, he has been unable to effectively work at his job." On the Iowa Workforce Development (IWD) medical report dated January 30, 2009, Dr. Booth reiterated the diagnoses and indicated he was unable to work more than two hours or drive more than 30 miles in a day. He also reported that claimant was not able to perform his occupation between April 7 and the "current" time. Claimant did not carry workers' compensation insurance on himself.

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.

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.

Because of the significant limitations on his ability to work pursuant to medical restrictions even considering the flexibility he can provide as the owner of the company, it is clear that claimant is not medically able to work and most certainly would not be able to work in a competitive work market outside of his company. Unemployment insurance benefits are designed for those who are not employed through no fault of their own. While claimant was not the cause of his unemployment, however, neither was it his company's fault or responsibility for the drunk driver's reckless behavior that led to the accident. His remedy is through workers' compensation (for which he does not have coverage), Social Security Disability, private disability insurance, or civil financial compensation for damages. Benefits are withheld.

DECISION:

The representative's decision dated February 9, 2009, reference 01, is affirmed. The claimant is not able to work and available for work effective December 7, 2008.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw