

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID E MILLER**  
Claimant

**APPEAL NO. 07A-UI-00759-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC.**  
Employer

**OC: 08/27/06 R: 02**  
**Claimant: Appellant (1)**

Section 96.4(3)-Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 16, 2007, reference 04, decision that denied benefits because the claimant is not able to perform work due to injury. After due notice was issued, a telephone conference hearing was held on February 6, 2007. Claimant did participate. Employer participated through Kathy Anderson.

**ISSUE:**

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

**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 production worker for DES Staffing Services assigned to work at Excel marketing from October 24, 2006 until November 6, 2006 when he was involved in a motorcycle accident causing his hospitalization and inability to report for available work. On January 12, 2007, DES Staffing Services requested that the claimant supply a doctor's note specifying that the claimant was able to return to work. On January 22, 2007, Mr. Miller stated that he would bring in a doctor's release but did not do so. At the time of hearing, Mr. Miller was scheduled for additional examinations by his surgeon and his psychologist. The claimant is convalescing and recuperating and plans to supply a full medical release when it is obtained.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is not able and available for work. The evidence establishes that Mr. Miller sustained substantial injuries in a non-work-related accident on or about November 6, 2006. The evidence establishes that he has been under the care of physicians and recuperating since that day and has not supplied a full release from his doctor.

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 24.22(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 medical practitioner and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established an ability to work. Employer is not obligated to accommodate a non-work-related medical condition. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The representative's decision dated January 16, 2007, reference 04, is hereby affirmed. The claimant is not able to work and available for work effective December 10, 2006. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

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Terence P Nice  
Administrative Law Judge

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Decision Dated and Mailed

tpn/pjs