

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK J COMBS**  
Claimant

**APPEAL NO. 06A-UI-09790-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUALITY MAT CO INC**  
Employer

**OC: 08/27/06 R: 03  
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, Quality Mat, filed an appeal from a decision dated September 26, 2006, reference 01. The decision allowed benefits to the claimant, Mark Combs. After due notice was issued a hearing was held by telephone conference call on October 18, 2006. The claimant participated on his own behalf. The employer participated by Owner Mike Narey.

**ISSUE:**

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

**FINDINGS OF FACT:**

Mark Combs began his most recent period of employment with Quality Mat in April 2002. He was hired as a full-time production worker. Apparently due to some attendance issues he was re-classified as a part-time driver in January 2006. His last day of work was August 11, 2006, although Owner Mike Narey asked him to work on August 21, 2006, but he was no-call/no-show. Shortly thereafter Mr. Narey learned the claimant's commercial driver's license had been suspended and it remains suspended through the date of the hearing.

Mark Combs has received unemployment benefits since filing a claim with an effective date of August 27, 2006.

**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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant's most recent job with Quality Mat was as a part-time driver. He is currently not able to perform this work because he does not have a valid driver's license. Under the provisions of the above Administrative Code section, he is not available the major portion of the workweek for his regular employer and is therefore not eligible for benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of September 26, 2006, reference 01, is reversed. Mark Combs is ineligible for benefits as he is not able and available for work. He is overpaid in the amount of \$1,284.00.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs