

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WILLIAM E BARBER
701 N PIERCE ST
MT AYR IA 50854

MID-STATES FORD INC
1450 E HWY 6
PO BOX 940
WAUKEE IA 50263

Appeal Number: 06O-UI-01553-HT
OC: 10/30/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, William Barber, filed an appeal from a decision dated November 16, 2005, reference 01. The decision found him ineligible to receive unemployment benefits. A decision was issued in Appeal 05A-UI-12016-HT on December 22, 2005. The Employment Appeal Board remanded the matter for additional testimony. After due notice was issued in the current matter, a hearing was held by telephone conference call on February 27, 2006. The claimant participated on his own behalf. The employer, Mid-States Ford, participated by Vice President Mike Perry.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: William Barber retired from the United States Armed Services in November 1984. After that time he was a self-employed business owner for two periods, November 1984 until 1992, and from December 2001 until 2003.

After he sold his first business in 1992, Mr. Barber worked for three different insurance companies until December 2001. His work for all three of these employers entailed workweeks in excess of 50 hours and sometimes ranging up to 80 or 100 hours per week.

His second period of self-employment ended in 2003, when he began working for Quality Ford until January 2004, and then for Noble Ford Mercury from January until October 2004, and then with the current employer beginning October 2004. Each of these jobs as an auto sales person entailed workweeks ranging from 50 to 75 hours per week. Both Mr. Barber and Mr. Perry agreed that workweeks in the automobile sales profession are this long regardless of the dealership.

The claimant was certified to return to work without restrictions by his physician effective December 11, 2005, and this issue has previously been adjudicated in another hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible. The judge concludes he is not.

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".

Since 1984 the claimant has worked either in self-employment or in the auto dealership and insurance industries. All of the wage credits Mr. Barber has earned from insured work, both before, during, and after his base period, have been in jobs requiring substantially more than a 40-hour work week.

While the administrative law judge does not dispute that Mr. Barber would be able and available in the labor market generally, he was seeking to return to work with Mid-States Ford in the same full-time capacity as he had prior to his medical leave. The Board quoted many statutes and administrative code sections, but all of those pre-suppose a claimant has been separated from employment and is seeking work elsewhere in the labor market. However, returning to the current employer after a non-work-related medical condition does require a full release. In this case Mr. Barber was not released to return to the full 56-hour workweek.

The Board also relies heavily on Sierra v. Employment Appeal Board, 508 N.W.2d 719 (Iowa 1993). The administrative law judge distinguishes this on the basis that the employer in Sierra was refused to allow the claimant to return to work due to an ongoing medical condition when she had worked with this same condition throughout the course of her employment. The judge considers the facts in that case to be different than those in the present case and more in line with the provisions of Hedges v. IDJS, 368 N.W.2d (Iowa App. 1985), as noted in the original decision in this case.

The claimant was not able and available for work in either of his previous occupations at the time he filed for benefits on October 30, 2005.

DECISION:

The representative's decision of November 16, 2005, reference 01, is affirmed. William Barber was not able and available for work from October 30 until December 11, 2005.

bgh/kjw