

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E STARLING

Claimant

APPEAL NO. 10A-UI-03560-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALDWELL AND HARTUNG INC

Employer

**Original Claim: 01/24/10
Claimant: Appellant (1-R)**

Section 96.4-3 – Able and Available

871 IAC 24.23(34,35) – Medical Care/Not Released to Work

871 IAC 24.13(3) – Deductible Worker’s Compensation/TTD

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 26, 2010, reference 01, that held he was granted a leave of absence, voluntarily unemployed, and not available for work, and that denied benefits effective November 17, 2009. A telephone hearing was held on April 20, 2010. The claimant and his witness, Carla O’Brien, participated. Rose Marquardt, President, participated for the employer.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began part-time work for the employer as a Saturday-night newspaper delivery driver on March 21, 2009. The claimant was already working a part-time furniture moving job for Smoldt Moving and Storage Inc. (er account #317932). The claimant suffered a job-related injury at Smoldt in September 2009, and he began receiving weekly temporary total workers’ compensation in the amount of \$258.00.

On November 15, the claimant advised the employer he could no longer perform all of his job duties, and he was placed on leave status. The claimant has contacted the employer about further work on February 9, and March 22, 2010, but he has not provided a doctor’s unrestricted release to return to work.

The claimant filed an unemployment claim effective January 25, 2009. The claimant filed an additional claim effective July 12, re-opened his claim September 30, and he filed an extended benefit claim effective August 23. The claimant has been claiming and receiving benefits during a 21-week period from the week ending September 5, 2009 through the week ending January 23, 2010, and it does not appear he has reported his \$258.00 weekly workers’ compensation (TTD) during this period.

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(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.

The administrative law judge concludes that the claimant is not able to work do to being under medical care without an unrestricted release to return to work, and he is disqualified effective November 17, 2010.

The claimant was not able to perform work for the employer on November 17, 2009, due to being under doctor's care for a non-job-related injury (at Smoldt), and not having an unrestricted release to return to work. The claimant has failed to provide satisfactory medical evidence that he now has an unrestricted medical release to return to work for the employer as of the date of this hearing. The evidence does not establish the claimant agreed to a leave of absence.

871 IAC 24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

The administrative law judge further concludes that the issue of the claimant receiving temporary total workers' compensation disability (TTD) is remanded to Investigation and Recovery.

The claimant testified his was injured at Smoldt Moving & Storage Inc. (er account #317932), and he began receiving workers' compensation in September 2009. A review of the claimant's claim record for a 21-week period ending January 23, 2010 does not show he has been reporting his \$258.00 weekly workers' compensation. This type of compensation is deductible

from an individual receiving unemployment benefits. This issue is remanded for an investigation.

DECISION:

The department decision dated February 26, 2010, reference 01, is affirmed. The claimant was not able to perform work do to a non-job-related injury, and benefits are denied effective November 17, 2010. The workers' compensation issue is remanded to Investigation & Recovery.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw