

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E DICKEY
Claimant

APPEAL NO. 07R-UI-01017-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST SIDE TRANSPORT INC
Employer

OC: 01/01/06 R: 12
Claimant: Respondent (1)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

West Side Transport, Inc. (employer) appealed a representative's February 1, 2006 decision that concluded James E. Dickey (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A hearing was held on March 30, 2006. In addition to the employment separation issue, an issue of whether the claimant was able to and available for work as of January 6, 2006, was also addressed during the March 30, 2006 hearing. Based on the evidence presented, an April 20, 2006 decision concluded the claimant was not able to work as of January 6, 2006, and the claimant was overpaid \$4,381.00 in benefits he received for the weeks ending January 7 through April 8, 2006. The claimant appealed the decision to the Employment Appeal Board.

After the Employment Appeal Board affirmed the decision, this matter was appealed to District Court. On January 18, 2007, District Court Judge Arthur Gamble remanded the issue of whether the claimant was able to and available for work to the Employment Appeal Board, which in turn remanded this issue to the Appeals Section. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on this issue on February 15, 2007. The claimant was present with his attorney, Joseph Walsh. Dave Schrock, attorney, appeared on the employer's behalf. Barb Teply, Laura Watson, and Will Meirs were available to testify. The parties agreed the record made on March 30, 2006, would be supplemented with evidence presented during the February 15, 2007 hearing. In addition to the claimant testifying, Employer Exhibit One and Claimant Exhibits A and B were offered and admitted on February 15, 2007. Based on the evidence presented on March 30, 2006 and February 15, 2007, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work as of January 6, 2006?

FINDINGS OF FACT:

The claimant started experiencing episodes of blacking out in November 2005. (Tr. 44.) On November 14, 2005, the claimant saw a physician at the Veterans Affairs Medical Center in Iowa City. The claimant was informed he would not be able to drive for six months as a result of his apparent blackouts. The claimant underwent numerous tests. On December 14, 2005, another physician, Dr. Holstein, gave the claimant a work restriction stating he could not drive a truck until he had taken sleep study test. (Employer Exhibit Four March 30, 2006.)

After seeing Dr. Holstein in Iowa City, the claimant went home to Florida. At a Veterans Affairs Hospital in Florida, the claimant saw Dr. Vitalis on January 6, 2006. Dr. Vitalis concluded the sleep study test was not needed. Based on the claimant's comments and a review of his on-line medical records, Dr. Vitalis concluded the claimant's previous symptoms had been the result of CO poisoning. Dr. Vitalis, however, indicated the claimant should have a Holter monitor. Dr. Vitalis did not give the claimant any work restrictions. (Claimant Exhibit A February 15, 2007.)

On February 7, 2006, the claimant saw PA-C, Virginia Parker, who stated the claimant had not been cleared to drive commercial vehicles as of February 7, 2006, because various tests had not been completed. (Claimant Exhibit B February 15, 2007.)

The claimant established a claim for unemployment insurance benefits during the week of January 6, 2006. After establishing his claim for benefits, the claimant looked for work as a carpenter, painter, a laborer at a concrete plant, a short-order cook or any manual labor job. After the claimant was determined ineligible to receive benefits, he has primarily worked at odd jobs (home improvement jobs) for cash.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law does not require a claimant to be able to do a job he had been doing; a claimant only has to establish that he is not unduly limiting the work he is willing to accept.

Both parties agree the claimant was restricted from driving by the doctors he saw in mid-November, mid-December 2005 and early February 2006. On January 6, 2006, Dr. Vitalis did not give the claimant any work restrictions.

This case is difficult because the claimant saw a number of doctors in different states. While his medical records may be in a computer, no one knows how much weight any doctor gave another doctor's suggestions or suggested course of treatment or tests. The employer asserted there is only an inference that the claimant is able to work at jobs other than truck driving. However, the only work restriction the claimant received was that he could not drive. Even though not all tests had been completed by early February 2006, the evidence does not indicate any doctor restricted him from working, only from driving a truck.

The claimant could have made this a very easy case if he would have obtained a doctor's statement clarifying that his only work restriction was driving a truck and he was able and available to work other jobs that did not require him to drive a truck. Although the claimant did not provide this evidence, a preponderance of the evidence establishes he was only restricted from driving. The claimant's testimony that he looked for work in which he had work experience

is credible. Therefore, as of January 6, 2006, the claimant is eligible to receive unemployment insurance benefits, provided he has met all other eligibility requirements.

(Although the overpayment issue was not noted as a hearing issue, this decision holding the claimant eligible to receive benefits as of January 6, 2006, effectively reverses the overpayment decision that was issued on April 20, 2006.)

DECISION:

The representative's February 1, 2006 is affirmed. The claimant was able to and available for work as of January 6, 2006. Therefore, he is eligible to receive benefits as of January 6, 2006, provided he has met all other eligibility requirements. As a result of this decision the claimant has not been overpaid \$4,381.00 in benefits he received for the weeks ending January 7 through April 8, 2006.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw