

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE B MYERS
Claimant

APPEAL NO: 07A-UI-06949-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

OC: 12/03/06 R: 02
Claimant: Appellant (1)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Lawrence B. Myers (claimant) appealed a representative's July 13, 2007 decision (reference 08) that held he was not eligible to receive benefits for the week ending April 14, 2007, because he was not available to work the majority of the work week for Ruan Transport Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2007. The claimant participated in the hearing. Dave Vetter, the terminal manager, appeared on the employer's behalf. Based on the evidence, 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:

Was the claimant able to and available for work during the week of April 8, 2007?

FINDINGS OF FACT:

The claimant started working for the employer on May 30, 2006. The claimant worked as a full-time short-haul truck driver. The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006, and started filing for partial benefits when the employer did not have enough work for him to do full-time.

Prior to April 10, the employer informed the claimant he was on the "hot seat". This meant the claimant was the fifth person on a list to drive a load. The evening of April 10, 2007, the employer's dispatcher contacted the claimant to work the next day, April 11, 2007. The claimant indicated he was not available to work April 11, 2007. The evening of April 11, the employer's dispatcher contacted the claimant to take a load the next day. The employer understood the claimant would take the load. The claimant did not report to work or contact the employer on April 12.

The employer sent the claimant a warning letter on April 12 for being unavailable to work on April 11, 2007. When the claimant did not report to work on April 12, the employer sent the claimant a certified letter indicating he was suspended one day for not reporting to work on April 12. A member of the claimant's family signed for the certified letter on April 14, 2007. The

claimant did not see the suspension letter. The claimant filed a claim for the week ending April 14, 2007.

The employer requires employees to make a written request for a day off from work. The claimant had made written requests prior to April 8 when he needed a day off for medical appointments. The employer also requires employees to call the employer to report when they are ill and unable to work. The claimant did not call in sick for April 11 or 12 and he did not make a written request to have either day off from work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not available for work when he fails to work the major portion of the scheduled workweek for his regular employer. 871 IAC24.23(29). The facts show the claimant did not work two days the employer asked him to work, April 11 and 12. When the claimant did not report to work on April 12, the employer suspended him from work one day, April 13. The facts establish the claimant was not available for work a major portion to this week. Therefore, he is not eligible to receive benefits for the week ending April 14, 2007.

DECISION:

The representative's July 13, 2007 decision (reference 08) is affirmed. The evidence establishes the claimant was unavailable to work the majority of the week ending April 14, 2007. Therefore, the claimant is not eligible to receive benefits for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs