

**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**

**JAMES G CLOUDAS
909 S PAXTON ST
SIOUX CITY IA 51106**

**JEBRO INC
2303 BRIDGEPORT DR
SIOUX CITY IA 51111**

**Appeal Number: 05A-UI-11357-JTT
OC: 10/02/05 R: 01
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 96.5(1)(d) – Voluntary Quit Due to Medical Condition
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Claimant James Cloudas filed a timely appeal from the October 27, 2005, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on November 21, 2005. Mr. Cloudas participated. Human Resources Manager Chad Anderson represented Jebro and presented additional testimony through Transportation Director Bob Cheever. Exhibit A was received into the evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Cloudas was employed by Jebro as a full-time truck driver from May 6, 2005 through August 11, 2005, when he voluntarily quit the employment due to a non-work-related medical

condition. In early August 2005, Mr. Cloudas was diagnosed with diabetes. The diabetes was not caused or aggravated by the employment. At the time, Mr. Cloudas was under the treatment of Physician's Assistant Molly Earleywine. P.A. Earleywine believed that Mr. Cloudas would soon become insulin dependent. If Mr. Cloudas became insulin dependant, he would no longer meet Department of Transportation eligibility requirements for transporting hazardous waste. P.A. Earleywine advised Mr. Cloudas that he should cease driving a truck and pursue other work. On August 11, Mr. Cloudas met with his immediate supervisor, Transportation Director Bob Cheever, and advised Mr. Cheever that he would need to leave the employment based on the recommendation of P.A. Earleywine. Mr. Cloudas did not provide the employer with any documentation from the health care provider or request any accommodation. The employer accepted Mr. Cloudas' resignation. After Mr. Cloudas separated from the employment, he made lifestyle changes that allowed him to avoid becoming insulin dependant. Instead, Mr. Cloudas' diabetes was and is managed through prescription pills. Based on the improvement in his health and his desire to return to driving a truck, at the end of August or beginning of September, Mr. Cloudas contacted P.A. Earleywine to inquire whether it would be okay for him to return to truck driving. Though Mr. Cloudas indicates that P.A. Earleywine cleared him to return to work without restrictions, Mr. Cloudas offered into evidence a letter from P.A. Earleywine that indicates otherwise. Mr. Cloudas contacted Mr. Cheever at Jebro and inquired whether the employer would re-hire him. Mr. Cheever advised that the employer had no positions available at the time. Thereafter, Mr. Cloudas continued to look for truck driving positions.

Mr. Cloudas offered into evidence a note from his health provider, Physician's Assistant Molly Earleywine, dated November 2, 2005. The note indicates that Mr. Cloudas "was unable to be gainfully employed beginning approximately August 11, 2005 and extending through the month of October due to his multiple medical problems." The note further states that Mr. Cloudas' "condition has now stabilized, and he has been able to return to work." On November 15, 2005, Mr. Cloudas commenced a full-time truck driving position.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Cloudas has been able and available for work since establishing his claim for benefits.

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 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

In order for Mr. Cloudas to be eligible to receive benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a). A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. See 871 IAC 24.22(1)(a). An individual must be able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides. See 871 IAC 24.22(1)(b).

Based on this evidence, the administrative law judge concludes that Mr. Cloudas was not able and available for employment prior to November 1, 2005, but has been able and available for work since that time. Accordingly, Mr. Cloudas would be disqualified for benefits for the period prior to November 1, but would be eligible for benefits effective November 1, provided he is otherwise eligible.

The next question is whether the evidence in the record establishes that Mr. Cloudas' voluntary quit was for good cause attributable to the employer. It does not.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified

by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The evidence in the record indicates that Mr. Cloudas did not leave the employment upon the advice of a licensed and practicing physician. The weight of the evidence further indicates that Mr. Cloudas had not fully recovered, nor had his recovery been certified by a licensed and practicing physician, at the time he contacted the employer in late August or early September to inquire about returning to work. Mr. Cloudas' voluntary quit was not for good cause attributable to the employer. Accordingly, Mr. Cloudas is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See Iowa Code section 96.5(1)(d) and White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992).

DECISION:

The Agency representative's October 27, 2005, reference 03, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. In addition the claimant was disqualified for benefits prior to November 1 because he was not able and available for work. The claimant became able and available for work effective November 1, 2005.

jt/kjw