

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES H WHITE JR
Claimant

APPEAL NO. 07A-UI-11031-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR COOPERATIVE
Employer

OC: 10/21/07 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 19, 2007, reference 02, that concluded he was not able to and available for work. A telephone hearing was held on December 13, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Laura Schwicherath participated in the hearing on behalf of the employer with a witness, Randy Park. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from December 1, 2006, to October 9, 2007. His supervisor was Randy Park.

On October 9, 2007, the claimant collapsed on the job at work and was taken to the hospital. Initially, the doctors thought that the claimant might have had a stroke, but after completing some tests, the doctor's diagnosed the claimant as having severe migraine headaches for which the claimant has been treated with medication. The claimant's doctor restricted the claimant from driving and operating heavy equipment for six months because of the possibility of blacking out. No doctor has stated that the migraines were caused or aggravated by his employment.

The claimant's doctor prepared a work status statement dated October 18, 2007. In the statement, the doctor stated the claimant could return to work but could not drive or operate machinery and that desk work would be considered appropriate.

The claimant contacted his supervisor, Randy Park, the grain division manager. He informed him about the doctor's restrictions and suggestion about having a desk job. Park informed the claimant that the employer did not have work meeting those restrictions.

The claimant has not quit employment and the employer has not discharged the claimant. Although he never formally requested a leave of absence, the employer considers him to be on

a medical leave of absence and will rehire him when he is released to drive. The claimant understands that he is on a leave of absence and has not applied for work because he is waiting to go back to work for the employer and the Agency has not required he look for work. The extent of his work search involves looking for job postings to find work that does not required driving or operating machinery and involves desk work.

The claimant has a high school degree and worked as a diesel mechanic in the military. His past work experience has been limited to driving and laborer positions. He does not have any vocational training, other than for his position in the military.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The rules provide that a leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)j.

Although the claimant did not request the leave of absence, he has accepted it and has acted consistently with someone who requested a leave of absence. He has not been applying for work and has only been looking at job postings for desk jobs. He has not established any jobs that he is qualified for by training and experience that would meet his work restrictions of not being able to drive and requiring a desk job. The claimant's past work experience has involved driving and laborer jobs, which the claimant has not been released to perform.

The claimant is ineligible for unemployment insurance benefits effective October 21, 2007. If his circumstances change and he believes the disqualification should be lifted, he should reopen his claim and establish that he is now able to work and available for work.

DECISION:

The unemployment insurance decision dated November 19, 2007, reference 02, is affirmed. The claimant is ineligible for unemployment insurance benefits effective October 21, 2007, and continuing until he establishes that circumstances have changed and he is now able to and available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css