

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID D HAYS

Claimant

APPEAL NO. 13A-UI-11434-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRETE CARRIER CORP

Employer

OC: 08/25/13

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 2, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits as of August 25, 2013. After due notice, a hearing was held on November 4, 2013, by telephone conference call. The claimant participated personally. The employer participated by Elizabeth Coker, Human Resources Generalist. The record consists of the testimony of David Hays and the testimony of Elizabeth Coker.

The administrative law judge informed the parties that the issue in this case was whether the claimant was able and available for work and that that issue had not been identified on the hearing notice. The parties agreed to waive notice so that this issue could be considered and decided by the administrative law judge.

ISSUE:

Whether the claimant was able and available for work as of August 25, 2013.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a transportation company. The claimant was hired on September 26, 2012, as a full-time driver. His last day of work was July 4, 2013. The claimant and another driver were in California when the claimant suffered a stroke. The employer placed the claimant on a leave of absence. The claimant was never released to return to work as an over-the-road driver. On October 17, 2013, the claimant told the fleet manager, Derek Phillips, that he would not return to work for Crete as his doctor recommended that he not be an over-the-road driver.

The claimant established an original claim for unemployment insurance benefits on August 25, 2013.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.22(2)j(1)(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. 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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant had a stroke on July 4, 2013, and was placed on a leave of absence in order to permit him to recover from that illness. The employer kept extending the leave of absence as the claimant indicated to the employer that he was having physical therapy. The claimant was required to take a physical in order to return to work for the employer. The claimant did not take the physical. He finally informed the employer on October 17, 2013, that he was unable to return to work as an over-the-road driver.

The claimant established his claim on August 25, 2013. At that time the claimant was still off work on an approved medical leave of absence. By law, he is voluntarily unemployed and not able and available for work. Benefits are denied as of August 25, 2013.

DECISION:

The decision of the representative dated October 2, 2013, reference 01, is affirmed. Unemployment insurance benefits are denied as of August 25, 2013.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css