

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD NEIL
Claimant

APPEAL NO: 07A-UI-07201-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRIPOLI READLYN SANITATION AGENCY
Employer

**OC: 06-03-07 R: 03
Claimant: Appellant (2R)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 19, 2007, reference 01, decision that denied benefits stating he was not able and available for work because he was unduly limiting his availability to work to one occupation. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 18, 2007. The claimant participated in the hearing with Attorney Dave Mason, Jr. Deann Lahman, Treasurer, participated in the hearing on behalf of the employer and was represented by Attorney Beth Hanson. Claimant's Exhibits A, B and C and Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a garbage truck driver for Tripoli Readlyn Sanitation Agency from June 1, 2000 to July 10, 2007. On November 13, 2006, the claimant had a seizure while at home and it was later discovered he had a brain tumor which was removed January 4, 2007. His physician told him he could not drive for six months. He was required to have a DOT physical before returning to work and that showed the claimant was in the beginning stages of macular degeneration in his right eye. He was also restricted to wearing glasses, hearing aids, having a left outside mirror and was required to get a right eye waiver from the Federal DOT. He was to provide all doctor reports and a letter from the employer that included a statement that he had been driving with his "vision deficiency for the 3-year period immediately preceding the date of this application" on a signed company letterhead as well as some other information (Claimant's Exhibit C). The claimant first asked the employer for the letter in May 2007, and again in June and July before the employer complied August 2007, because the first time it was aware of the claimant's eye problem was May 2007. The Federal DOT initially denied the claimant's request for a waiver November 2, 2007, because it said he had a history of seizures and the claimant is appealing that decision because he only had one seizure (Employer's Exhibit One). The

claimant has applied for positions as a warehouse worker, Brinks armored car driver, baggage handler and feed grinding worker to name a few.

The issue of whether the claimant's separation from this employer is disqualifying has not been adjudicated by the claims section.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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, (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.

(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.

(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.

In order to be eligible for unemployment insurance benefits, the claimant must be able to perform some type of work, not necessarily the same work he has been doing. While the claimant cannot drive a garbage truck for the employer at this time because he has not received the right eye waiver, he is able and available to perform work in other areas and has applied for positions where his health or eyesight would not be an issue. He has no medical restriction or other limitation on his employability in other areas after approximately June 4, 2007. Accordingly, benefits are allowed effective July 10, 2007, when his employment was terminated.

DECISION:

The July 19, 2007, reference 01, decision is reversed. The claimant is able to work and available for work effective July 10, 2007. Benefits are allowed provided the claimant is otherwise eligible to receive them. The issue regarding the claimant's separation from this employer is remanded to the claims section for an initial determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs