

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L KYLE

Claimant

APPEAL NO. 11A-UI-02799-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAIL CONTACTORS OF AMERICA INC

Employer

OC: 01 /09/11

Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available
871 IAC 23.24(6) – Unable to Perform Work/Injury
Section 95.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 25, 2011, reference 03, that held the claimant was able and available to work beginning on January 9, 2011, and that allowed benefits. A telephone hearing was held on March 30, 2011. The claimant participated. Christina McBride, HR generalist, participated for the employer.

ISSUE:

Whether the claimant is able and available to work.

Whether claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time mail truck driver from January 14, 2001 until December 31, 2010. Claimant believes he injured his back on the job sometime in December. He went to an ER due to back pain and saw a doctor, who diagnosed lower back strain. When he reported to the employer he could not drive due to his back pain, it sent him to a company doctor on January 4.

The company doctor concluded claimant might have injured some discs in his lower back, and a message was sent to the employer restricting his work to no lifting more than 10 pounds and pushing more than 20 pounds. The employer put the claimant on leave, as the restrictions precluded him from being able to do his regular job as a truck driver.

Later, the employer denied the injury as a job-related worker's compensation claim, because claimant failed to timely notify the employer of the injury. Claimant went to his doctor, who after a period of treatment, released him to return to work without restriction on January 21 that was confirmed by a company doctor. The claimant returned to work on January 21.

Claimant has received unemployment benefits on his claim.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The administrative law judge concludes that the claimant was unable to perform work due to a non-job-related injury effective January 1, 2011.

The claimant was subject to doctor-imposed work restrictions that precluded him from performing all of his job duties for the period from January 1 to January 21. The claimant was unable to work due to injury and he is not eligible for benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has received benefits, the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated February 25, 2011, reference 01, is reversed. The claimant is disqualified January 9, 2011, as he was unable to perform work due to injury. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw