

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK P GEGENHEIMER**  
Claimant

**APPEAL NO. 14A-UI-04452-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LIEBE TRUCKING INC**  
Employer

**OC: 03/30/14  
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 23, 2014 (reference 04) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on May 19, 2014. The claimant did participate and was represented by Corey J. L. Walker, attorney at law. The employer did through Dennis Peterson, Human Resources Business Partner and Sara Liebe, Vice-President and Stacey Early. Claimant's Exhibits A through C were entered and received into the record. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an over-the-road driver beginning on October 29, 2007 through April 1, 2014 when his employment ended.

The claimant sustained a work-related injury in November 2012. As a result of that injury the claimant now has permanent work restrictions that prevent him from returning to work as a truck driver for this employer. The claimant had been performing light-duty work that complied with his work restrictions up until October 2013 but that work is no longer available to him. The claimant is able to work, albeit within his work restrictions. His current permanent work restrictions are found at Claimant's Exhibit B and include no lifting above 50 pounds. He thinks he may be able to drive a truck again, but not for this employer as he is not able to lift the tarp that weighs over 50 pounds as is sometimes required as part of the truck driver job duties.

**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 § 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 Admin. Code r. 871-24.22(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.

The claimant is not able to return to work for this employer due to his current work restrictions. However, he has established that he is able to work if the work meets his permanent work restrictions. He was able to work his light-duty position until October 2013 when the work ended. Under these circumstances the claimant is considered able to and available for work effective March 30, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The April 23, 2014, (reference 04), decision is affirmed. The claimant is able to work and available for work effective March 30, 2014. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs