

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LEROY M FARIS

Claimant

APPEAL NO: 19A-UI-08043-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARTER-MILLER SERVICES INC

Employer

OC: 09/15/19

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 10, 2019, reference 01, decision that denied benefits and determined the claimant was receiving total temporary disability payments. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 6, 2019. The claimant participated in the hearing with Attorney Thomas Berg. James Miller, President/Owner, participated in the hearing on behalf of the employer. Claimant's Exhibits A, B and C were admitted into evidence.

ISSUE:

The issues are whether the claimant is receiving total temporary disability and whether he 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 was employed as a part-time truck driver for Carter-Miller Services from November 4, 2016 to October 22, 2018. He was injured at work and voluntarily left his employment. The claimant received worker's compensation benefits and was placed on restrictions of not lifting more than 10 pounds and was unable to pull himself up into the truck.

The claimant received temporary total disability payments until July 11, 2019, at which time he was placed on permanent partial disability.

The claimant has been released to return to work with restrictions of not lifting more than 10 pounds and is unable to pull himself up into his work truck.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is receiving permanent partial disability payments and is able and available for work.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

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".

While the claimant received total temporary disability payments, those benefits stopped before the claimant filed his claim for unemployment benefits. The claimant is receiving permanent partial disability payments at this time. Those payments are not deductible from unemployment insurance benefits.

Inasmuch as the injury is considered work-related and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Therefore, the claimant is able and available for work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated October 10, 2019 (reference 01) is reversed. The claimant's permanent partial disability payments are not deductible from unemployment insurance benefits and the claimant is able to work and available for work effective September 15, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn