

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY L FITES

Claimant

APPEAL NO. 07A-UI-10453-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C E CONTRACTING LTD OF IOWA

Employer

**OC: 10/14/07 R: 02
Claimant: Appellant (4)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Barry Fites filed an appeal from a representative's decision dated November 8, 2007, reference 01, which denied benefits effective October 12, 2007 on a finding that he was still employed by C E Contracting, Ltd. of Iowa under the same terms and conditions as hired. After due notice was issued, a hearing was held by telephone on November 29, 2007. Mr. Fites participated personally and Exhibit A was admitted on his behalf. The employer participated by Lynn Alcott, Office Manager.

ISSUE:

At issue in this matter is whether Mr. Fites satisfies the availability requirements of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Fites began working for C E Contracting, Ltd. of Iowa in May of 2005. He was at all times a full-time truck driver. On June 3, 2007, he was involved in a motor vehicle accident that was not related to his employment. As a result of the accident, Mr. Fites' driver's and chauffeur's licenses were suspended.

Mr. Fites was released to return to work on October 15, 2007 and re-offered his services to the employer. Because he no longer had a valid license, his job as a truck driver was no longer available. The employer did not have other work available for him at that time. Mr. Fites returned to work on November 1 as a laborer. He worked full time until November 9 and was then advised that he was being laid off due to lack of work. Mr. Fites' claim for job insurance benefits was filed effective October 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

Mr. Fites had been released by his doctor to resume work activity when he filed his claim for job insurance benefits. However, he could not return to his former job as a truck driver at that point because he had lost his license to drive. He was not available to work for the employer as of October 15, because he was not licensed to operate a vehicle. The administrative law judge

appreciates that the employer may have agreed to return Mr. Fites to work when he was released in spite of him not having a valid driver's license. However, the fact remains that his inability to work as a truck driver as of October 15 was not due to any matter within the control of the employer. Therefore, benefits are denied as of October 14, 2007.

The employer returned Mr. Fites to work as soon as work not requiring a driver's license was available. He returned to work as a laborer on November 1 and worked full time through November 9, when he was laid off. The employer chose to allow him to return to work in a capacity other than truck driver. Since the employer did not have work as a laborer available for him after November 9, his separation at that point was due to a layoff and not the fact that he did not have driver's license. Mr. Fites continued to be available to work for the employer as a laborer after November 9. For the above reasons, the administrative law judge concludes that Mr. Fites is able to and available for work as of November 11, 2007.

DECISION:

The representative's decision dated November 8, 2007, reference 01, is hereby modified. Mr. Fites is not eligible for benefits for the period from October 14 through October 31, 2007, as he was not available to perform his usual job. No benefits are payable for the period November 1 through November 9, as he was working full-time. Benefits are allowed effective November 11, 2007, provided Mr. Fites satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw