

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICK A FISCHER
Claimant

NORTH CEDAR TRUCKING LLC
Employer

APPEAL 20A-UI-08196-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 26, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2020, at 9:00 a.m. Claimant participated. Employer participated through Diana Paduska, Co-owner, and Lorraine Polhamus, Office Assistant. No exhibits were admitted.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time driver from May 13, 2018 until his employment with North Cedar Trucking ended on April 17, 2020. Claimant's Department of Transportation physical expired February 12, 2020. The physical is required for claimant to maintain his license and, thus, to perform work for employer. Employer reminded claimant 90, 60 and 30 days prior to expiration that he needed to complete his physical. Claimant did not get his physical completed prior to February 12, 2020. On February 18, 2020, claimant informed employer that he had pneumonia and could not take the physical at that time due to illness. Claimant filed an initial claim for unemployment insurance benefits effective March 22, 2020. On April 17, 2020, employer inquired as to the status of claimant's physical. Claimant reported that he had still not completed it. Employer terminated claimant's employment. Claimant did not fully recover from his illness until July 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are denied.

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 Admin. Code r. 871-24.22(1) 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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The maintenance of a CDL license is an employee's responsibility without an agreement to the contrary. An employer has a legal obligation to abide by licensing and safety statutes and regulations and not allow unlicensed individuals to drive. Claimant's failure to maintain a valid CDL license was a known condition of the employment because of failure to complete a DOT physical by the renewal deadline rendered him unable and unavailable for work. Claimant had pneumonia from February 8, 2020 through July 2020 and was unable to work due to the illness.

Claimant has not met his burden of proving that he is able to and available for work. Accordingly, claimant was not eligible for unemployment insurance benefits. Benefits are denied.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The June 26, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
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September 4, 2020
Decision Dated and Mailed

acw/sam