

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

LAWRENCE B MYERS

Claimant

APPEAL NO. 07A-UI-06950-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP

Employer

**OC: 12/03/06 R: 02
Claimant: Appellant (2)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Lawrence B. Myers (claimant) appealed a representative's July 13, 2007 decision (reference 10) that held he was not eligible to receive benefits for the week ending April 28, 2007, because he was not available to work the majority of the work week for Ruan Transport Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2007. The claimant participated in the hearing. Dave Vetter, the terminal manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant able to and available for work during the week of April 22, 2007?

FINDINGS OF FACT:

The claimant started working for the employer on May 30, 2006. The claimant worked as a full-time short-haul truck driver. The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006, and started filing for partial benefits when the employer did not have enough work for him to do full-time.

The claimant worked on April 16, 17, 18, 19 and 23. The claimant made a written request to have April 20 off from work. When the employer contacted the claimant the evening of April 23 to work April 24, the claimant indicated he was not available. The claimant does not know why he was not available to work on April 24, 2007. The claimant filed a claim for the week ending April 28, 2007.

The employer requires employees to make a written request for a day off from work. The employer also requires employees to call the employer to report when they are ill and unable to work. The claimant did not call in sick for April 24 and he did not make a written request to have this day off from work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not available for work when he fails to work the major portion of the scheduled workweek for his regular employer. 871 IAC 24.23(29). The facts show the claimant was not available to work on April 24. Even though the claimant does not remember why he was not available to work on April 24, the evidence does not establish that he was unable to work a major portion of the week. Since the employer discharged the claimant on April 25, and the decision for appeal 07A-UI-06974-DWT affirmed a representative's June 8 decision that concluded the claimant had been discharged for disqualifying reasons, the claimant is disqualified from receiving benefits as of April 22. This decision is moot.

DECISION:

The representative's July 13, 2007 decision (reference 10) is reversed. The evidence establishes the claimant was not unavailable to work the majority of the week ending April 28, 2007. Even though the claimant was available to work, the decision for appeal 07A-UI-06974-DWT, affirmed a representative's June 8 decision that held the claimant disqualified from receiving benefits as of April 22, 2007, because he had been discharged for disqualifying reasons.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css