

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA W DAVIDSON
Claimant

APPEAL NO. 09A-UI-16208-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CEDAR RIVER INT'L TRUCKS INC
HAWKEYE INT'L TRUCKS & FLEET SVCS**
Employer

OC: 09-21-08
Claimant: Appellant (2)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 22, 2009, reference 02, amending ref 01, decision that denied benefits. After due notice was issued, a hearing was held on December 3, 2009. The claimant did participate. The employer did not participate.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a route driver full time beginning in May 2006 through September 21, 2009 when he was discharged.

In late August 2008 the claimant could no longer safely drive due to his blood being too thick causing him to become tired and weak. He could not pass the DOT physical and without passing the DOT physical he was not able to drive. The claimant's physician, Roxanne Dunn, D.O. removed him from driving for a time. The employer had the claimant work in the office from August 15 until September 21, 2008 when he was discharged because the employer needed to fill his position. From September 21, 2008 on the claimant was able to work at office jobs where he would not be required to stand for long periods of time or engage in physical labor. The claimant was not able to drive.

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 effective September 21, 2008.

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".

871 IAC 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.

While the claimant was no longer able to drive or engage in physical labor, he was able to work in more sedentary positions. Thus, the administrative law judge concludes he was able to and available for work effective September 21, 2008. Accordingly, benefits are allowed.

DECISION:

The October 22, 2009, reference 02, decision is reversed. The claimant is able to work and available for work effective September 21, 2008. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs