

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL G SWEENEY
Claimant

APPEAL NO. 15A-UI-05158-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OBBERG FREIGHT CO
Employer

OC: 04/12/15
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Daniel Sweeney filed a timely appeal from the April 24, 2015, reference 01, decision that denied benefits effective April 12, 2015, based on an Agency conclusion that he was not able to perform work due to injury. After due notice was issued, a hearing was held on June 8, 2015. Mr. Sweeney participated. Jeff Dangelser represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims reporting (KCCO).

ISSUES:

Whether the claimant has been able to work and available for work within the meaning of the law since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Daniel Sweeney commenced his employment with Oberg Freight Company in April 2014 and worked as a full-time over-the-road truck driver until April 7, 2015, when he suffered what may have been a seizure. At the time of the incident, Mr. Sweeney was at a facility in Mitchell, South Dakota, inside a freight trailer performing work duties. Mr. Sweeney has just entered the trailer, stood up, fell, and hit his back and head on a concrete floor. Others at the scene summoned an ambulance and Mr. Sweeney was transported to an emergency room. Mr. Sweeney was discharged from the emergency room later in the day with instructions to follow up with his family doctor. The employer arranged for other staff to collect the tractor-trailer unit Mr. Sweeney had been operating and to transport Mr. Sweeney to his home in Rockwell City.

Mr. Sweeney promptly followed up with his primary care physician. The doctor advised Mr. Sweeney that he had substantial bruising on his spine. Mr. Sweeney's doctor kept Mr. Sweeney off work and restricted him from operating heavy equipment. On or about April 10, 2015, Jeff Dangelser, Safety Director, spoke to Mr. Sweeney. At that time, Mr. Sweeney advised the employer that his doctor had taken him off of driving, had indicated that Mr. Sweeney would need to undergo additional medical testing, and that Mr. Sweeney could potentially be restricted from driving a personal vehicle. Mr. Sweeney and the employer

understood at that time that Mr. Sweeney could not return to truck driving duties unless and until a doctor would recertify his ability to operate a tractor-trailer rig. Given Mr. Sweeney's doctor's suspicion that Mr. Sweeney had suffered a seizure, the employer and/or its worker's compensation carrier took the position that Mr. Sweeney's medical condition was not work related. Mr. Sweeney's doctor has never asserted that the April 7 incident was work-related.

On April 28, 2015, Mr. Sweeney saw his doctor for a follow up appointment. At that time, the doctor provided Mr. Sweeney with written medical restrictions that indicated Mr. Sweeney could not drive or operate heavy equipment due to his medical condition, but could perform desk duties. Mr. Sweeney had never performed desk duties for the employer. The employer employs support staff to assist with its trucking business, but does not have need for another sedentary worker. The employer concluded that it did not have desk duties available for Mr. Sweeney. The employer attempted to provide truck washing work to Mr. Sweeney, but that would have required that Mr. Sweeney move the trucks on the employer's property. The employer asked Mr. Sweeney to see whether his doctor would relax the medical restrictions to allow Mr. Sweeney to do that limited truck driving work, but the doctor declined to change Mr. Sweeney's medical restrictions.

Mr. Sweeney's doctor had Mr. Sweeney undergo testing on April 29 and May 22, to assist in determining whether Mr. Sweeney had indeed suffered a seizure. At the time of the appeal hearing on June 8, 2015, Mr. Sweeney was scheduled to undergo further medical testing to determine whether he suffered a seizure.

The employer and Mr. Sweeney maintain that Mr. Sweeney is attached to the employment. Both anticipate that Mr. Sweeney will return to his truck driving duties if and when he is released by his doctor to do so.

Mr. Sweeney established a claim for unemployment insurance benefits that was effective April 12, 2015 and has made weekly claims since then. Mr. Sweeney had made two job contacts per week, but has received a cool response from prospective employers when he discloses that he may have a seizure disorder.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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)a, (2) 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.

(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.

Iowa Admin. Code r. 871-24.23(1), (35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Because Mr. Sweeney is still attached to the employment, Mr. Sweeney's ability to perform work for the employer, and his availability for work with the employer, is a significant factor in determining whether he is eligible for unemployment insurance benefits. Since Mr. Sweeney established his claim for benefits, he has been unable to perform his regular truck driving duties with the employer. He has been unable to perform modified duties associated with truck washing. While Mr. Sweeney's doctor has released him to perform sedentary work, that sort of work is outside Mr. Sweeney's usual occupation and is not a type of work that the employer had available for him. While the employer is obligated to provide reasonable accommodations that would allow Mr. Sweeney to continue in the employment, reassigning Mr. Sweeney to desk duties would not constitute a reasonable accommodation given the nature of the employment and the nature of employer's business. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993)(regarding employers' duty to provide reasonable accommodations).

The administrative law judge must conclude that Mr. Sweeney's current medical restrictions prevent him from being able and available for work within in the meaning of the unemployment insurance law. Mr. Sweeney is ineligible for benefits effective April 12, 2015. Mr. Sweeney continued to be ineligible for benefits at the time of the June 8, 2015 appeal hearing.

DECISION:

The April 24, 2015, reference 01, is affirmed. The claimant has not been able and available for work since establishing his claim for benefits. The claimant is ineligible for benefits effective April 12, 2015. The claimant continued to be ineligible for benefits at the time of the June 8, 2015 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs