

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW T BICKFORD
Claimant

APPEAL NO. 09A-UI-06385-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIEBE TRUCKING INC
Employer

OC: 03-22-09
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 17, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 20, 2009. The claimant did participate. The employer did participate through Kathy Sawdy, representative employed by Merit Resources.

ISSUE:

Is 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 off work beginning on December 11, 2008 due to a non-work-related injury to his back and leg. The claimant was released to return to work by his physician on March 30, 2009. He was not physically able to work for the period from April 15 through April 22 due to a non-work-related stomach operation. The claimant was paid short-term disability benefits through his employer through April 3, 2009. He currently has no work restrictions and is able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work for the period from December 11, 2008 through March 30, 2009 and from April 15, 2009 through April 22, 2009.

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".

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.

871 IAC 24.23(35) provides:

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

(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.

Inasmuch as the medical condition was not work related and the treating physician did not release the claimant to return to work with or without restriction until March 30, 2009, the claimant was not able to and available for work from December 11, 2008 through March 30, 2009. The claimant was also not able to and available for work again from April 15 through April 22, 2009 due to a non-work-related stomach surgery. Employer is not obligated to accommodate a non-work-related medical condition. Benefits are withheld due to the claimant not being able to and available for work for the periods from December 11, 2008 through March 30, 2009 and from April 15, 2009 through April 22, 2009. The claimant is able to and available for work effective March 31, 2009 through April 14, 2009 and beginning April 23, 2009.

DECISION:

The representative's decision dated April 17, 2009, reference 01, is modified in favor of the appellant. The claimant is not able to work and available for work effective December 11, 2008

through March 30, 2009 and from April 15, 2009 through April 22, 2009. Benefits are allowed thereafter, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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