

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH C MAGERS
Claimant

APPEAL NO. 07A-UI-00740-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 11/26/06 R: 03
Claimant: Respondent (5)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's January 5, 2007 decision (reference 01) that concluded Kenneth C. Magers (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not have any work for the claimant to do after he recovered from a personal illness and offered to return to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2007. The claimant participated in the hearing. Katie Diercks, the assistant human resource manager, and Linda Davis, the nurse 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.

ISSUES:

Is the claimant able to and available for work?

Did the claimant decline a suitable job on November 24, 2006?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time maintenance mechanic on March 7, 2006. On May 19, 2006, the claimant was injured at work. As a result of his work-related injury, the claimant had surgery on his leg. The claimant was released to do light-duty work on July 5, 2006. In July, the employer assigned the claimant to light-duty work in the front office.

The claimant was off work for a personal illness from September 7 through October 6, 2006. After the claimant was able to walk with a cane, the employer had him do paperwork in the maintenance office. The claimant continued to work in the maintenance office until November 24, 2006.

As of November 24, 2006, the claimant's treating physician released the claimant to work full time, but gave him some permanent work restrictions. The work restrictions stated the claimant could not climb stairs or a ladder, he could do no heavy lifting (could not lift more than 20

pounds), and for every four hours he worked, he was only supposed to stand on his feet for three hours. As a result of these permanent work restrictions, the employer and claimant toured the employer's facility to find out what work the employer had available that met the claimant's work restrictions.

The claimant applied for two jobs he believed he could perform. The first job, a scaler on the cut floor, the employer determined did not meet the claimant's work restrictions. The other job, pet food operator, the employer initially told the claimant he could start the job on December 24, 2006. Later, the employer decided the job required the claimant to be on his feet longer than his restrictions permitted. Since the employer did not have any job available that met the claimant's work restrictions and the employer no longer planned to make accommodations, the employer placed the claimant on an unpaid medical leave as of November 24, 2006.

The claimant established a claim for unemployment insurance benefits during the week of November 26, 2006. The claimant does not agree with the restrictions his treating physician imposed upon him. The claimant has made appointments with the physician, but the appointments have been cancelled by the doctor. The employer has not agreed to pay for a second opinion and the claimant has not gone to another physician knowing that he would be responsible for paying the physician. The claimant believes the only restriction he should have is to avoid climbing ladders.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he declines an offer of suitable work without good cause. Iowa Code § 96.5-3-a. The facts establish that after touring the employer's facility on November 24, the claimant applied for two jobs that were open and he believed he was capable of performing with his permanent medical restrictions. The employer ultimately decided the claimant was unable to meet the requirement of either job because of his permanent work restrictions. The employer was not willing to provide any accommodations so the claimant could transfer to either position. Even though the employer asserted the claimant refused two jobs that met his work restrictions, neither of these positions were available.

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code §96.4-3. The claimant returned to work on July 5, 2006. From July 5 through November 24, 2006, the employer accommodated the claimant's work restrictions. As of November 24, the claimant's treating physician released him to work full time, but gave him some permanent work restrictions. At this point, the claimant had recovered from his work-related injury as much as he was going to; the employer decided no further accommodations would be made. When the employer did not have any jobs available that satisfied the claimant's medical restrictions, the employer placed the claimant on an unpaid medical leave. The claimant did not agree or request to go on a medical leave. 871 IAC 24.22(2)(I).

The claimant currently looks for work and hopes the employer will contact him about a job opening in the employer's facility. The facts establish that even though the claimant has some work restrictions, some of which he disputes, he is able to and available for work. The evidence shows that the claimant is eligible to receive unemployment insurance benefits while the employer continues his unpaid medical leave.

DECISION:

The representative's January 5, 2007 decision (reference 01) is modified, but the modification has no legal consequence. After a work-related injury, the claimant returned to work on July 5, 2006. The claimant worked until November 24, 2006, at which time his treating physician indicated the claimant had permanent work restrictions. After the employer decided no further accommodations would be made and the employer did not have any job opening available that met his work restrictions, the employer placed the claimant on an unpaid medical leave. The claimant is able to and available for work. Therefore, as of November 26, 2006, the claimant is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw