

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP S SCHACHEL
Claimant

APPEAL NO: 13A-UI-10959-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 09/01/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Phillip Schachel (claimant) appealed a representative's September 24, 2013, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work for Gray Transportation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 18, 2013. The claimant did provide a telephone number for the hearing but could not be reached at the time of the hearing. The administrative law judge left a message but the claimant did not return the call. The claimant's girlfriend, Belinda Ruefer, participated on his behalf. The employer participated by Darrin Gray, President.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer as an over-the-road driver from October 10, 2012, to August 19, 2013. On August 19, 2013, the claimant had a stroke. The claimant's physician told him he could not drive. The Department of Transportation restricted him from having a commercial drivers' license for a year. The claimant could not work for the employer as an over-the-road driver without a commercial drivers' license.

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

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.

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 has not released the claimant to return to work with or without restriction, the claimant has not established his ability to work. The employer is not obligated to accommodate a non-work-related medical condition, thus until the claimant is released to perform his full work duties, he is not considered able to or available for work. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which he is capable of performing given any medical restrictions.

DECISION:

The representative's September 24, 2013, decision (reference 03) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css