

REASONING AND CONCLUSIONS OF LAW:

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 24.23(1) 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.

The claimant was not able to work because of non-work-related medical problems. The release from his doctor imposed restrictions on his work activities and schedule. The claimant needed to have another physical to make sure he could comply with the DOT requirements. He did not comply with this request and continued his status as not fully released to return to work as required by Hedges v. IDJS, 368 N.W.2d (Iowa App. 1985). The claimant is not able and available for work and is ineligible for unemployment benefits until he has been fully released.

The issue of his separation from employment with Heartland Express should be remanded for determination.

DECISION:

The representative's decision of September 1, 2006, reference 01, is affirmed. Stanley Martin is not eligible for benefits, as he has not been released to return to work without restrictions.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw