

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE W WILKINSON
Claimant

APPEAL NO. 08A-UI-08790-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

**OC: 08/31/08 R: 04
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 25, 2008, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on October 16, 2008. Claimant participated personally. Employer participated by Dan Oney, Terminal Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant worked for the employer as a truck driver. Claimant was restricted from driving due to non-work-related medical conditions. Claimant initially had a temporary permit allowing temporary work until October 10, 2008. The temporary permit was revoked per doctor's advice once it was discovered that claimant was on medication due to the non-work-related health issue. Claimant will be on the medication for life. Claimant will not be able to return to truck driving work. Claimant cannot return to work for the employer as a truck driver.

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".

Inasmuch as the illness was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work or equivalent medical release demonstrating the ability to engage in gainful employment readily available in claimant's vicinity. Benefits shall be withheld effective September 6, 2008.

DECISION:

The decision of the representative dated September 25 2008, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective September 6, 2008, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw