

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR OTTO
Claimant

APPEAL NO. 11A-UI-08631-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CL CHAPMAN TRUCKING INC
Employer

OC: 05/22/11
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Arthur Otto (claimant) appealed an unemployment insurance decision dated June 24, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was employed at the same hours and wages with CL Chapman Trucking, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2011. The claimant participated in the hearing. The employer participated through Owners Clint and Leslie Chapman and Attorney Gene Collins. 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.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time general laborer from September 2008 and continues to be employed in that same capacity. A medical practitioner took the claimant off work on April 30, 2011, due to a work-related injury. The claimant is still attached to this employer and is currently receiving workers' compensation benefits because his restrictions prevent him from working in his regular job.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available to work.

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant cannot work in his regular job due to medical restrictions resulting from a work-related injury. However, he is still attached to the employer, so he is not actively and earnestly seeking work. The claimant does not meet the availability requirements of the law and benefits are denied.

DECISION:

The unemployment insurance decision dated June 24, 2011, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw