

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT A JOHNSON
Claimant

CENTRAL TRANSPORT LLC
Employer

APPEAL 17A-UI-06576-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 23, 2017, (reference 01) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on July 14, 2017. Claimant participated personally. Employer participated by John Steinbach, Terminal Manager. Employer's Exhibits 1-2 and Claimant's Exhibits A-D were admitted into evidence.

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 considered all of the evidence in the record, finds: Claimant began working for employer as a tractor truck driver in 2007. He suffered a cardiac event in May of 2017. He received treatment for that illness on May 28, 2017.

Claimant received a release to go back to work by his physician on June 1, 2017. Under Iowa Department of Transportation rules claimant is not allowed to drive a commercial vehicle for 60 days after undergoing cardiac treatment. Claimant is aware that he is unable to drive until after July 28, 2017. Claimant requested to return to work in the warehouse performing other duties that did not include driving. Employer refused to accommodate claimant's request.

Claimant is currently on an unpaid medical leave of absence until July 28, 2017. Employer does have work available to claimant once he is cleared to return to work and resume his duties as a truck driver.

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 effective June 4, 2017.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant has not established his ability to work while still an employee of Central Transport beginning on June 4, 2017. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since he has not been 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 is cleared to return to work as a truck driver for employer, unless he is otherwise separated from that employment.

DECISION:

The decision of the representative dated June 23, 2017, (reference 01) is reversed. Claimant is not eligible to receive unemployment insurance benefits, effective June 4, 2017.

REMAND: The claimant has received unemployment benefits that he may not have been entitled to receive. The overpayment issue is therefore remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn