

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

RICHARD L JACOBY

Claimant,

and

STARCO INC

Employer.

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HEARING NUMBER: 08B-UI-09943

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1-d

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED, in part, and REMANDED.**

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:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

In addition, the law also provides that a person "... must be physically able and available for work, not necessarily in the individual's customary occupation, but in some *reasonably suitable, comparable,*

gainful, full-time endeavor... that is generally available in the labor market..." (Emphasis added.)
See, 871 IAC 24.22(1)" b."

The administrative law judge did not elicit testimony as to whether or not the claimant was able and available for work outside of truck driving. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. The claimant needn't obtain an unconditional release to return to the workforce in order to qualify for unemployment benefits. In fact, we agree that he is eligible for benefits at such time he becomes in compliance with DOT regulations.

DECISION:

The decision of the administrative law judge dated November, 13, 2008 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

CONCURRING OPINION OF MONIQUE F.KUESTER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would not remand this matter based on what I consider to be a lack of good cause to do so.

AMG/fnv