

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE B MYERS

Claimant

APPEAL NO: 07A-UI-06948-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP

Employer

**OC: 12/03/06 R: 02
Claimant: Appellant (2)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Lawrence B. Myers (claimant) appealed a representative's July 13, 2007 decision (reference 07) that held he was not eligible to receive benefits for the week ending April 7, 2007, because he was not available to work the majority of the work week for Ruan Transport Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2007. The claimant participated in the hearing. Dave Vetter, the terminal manager, appeared on the employer's behalf. 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:

Was the claimant able to and available for work during the week of April 1, 2007?

FINDINGS OF FACT:

The claimant started working for the employer on May 30, 2006. The claimant worked as a full-time short-haul truck driver. The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006, and started filing for partial benefits when the employer did not have enough work for him to do full-time.

On April 3, 2007, the employer's dispatcher contacted the claimant to work the next day, April 4, 2007. The claimant indicated that he was not available to work April 4, 2007. The claimant filed a claim for the week ending April 7, 2007. April 4 was the only day the employer had work for the claimant.

The employer requires employees to make a written request for a day off from work. The claimant had made written requests prior to April 4 when he needed a day off for medical appointments. The employer also requires employees to call the employer to report when they are ill and unable to work. The claimant did not call in sick for April 4 and he did not make a written request for this day off from work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not available for work when he fails to work the major portion of the scheduled workweek for his regular employer. 871 IAC 24.23(29). The facts show the employer only had one day of work for the claimant to do, April 4, 2007. Even though the claimant does not remember why he was not available to work on April 4, the evidence does not establish that he was unable to work a major portion of the week. Therefore, the claimant is eligible to receive benefits for the week ending April 7, 2007.

DECISION:

The representative's July 13, 2007 decision (reference 07) is reversed. The evidence does not establish that the claimant was unavailable to work the majority of the week ending April 7, 2007. Therefore, the claimant is eligible to receive benefits for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs