

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L JACOBY
Claimant

APPEAL NO. 08A-UI-0994-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STARCO INC
Employer

**OC: 08/31/08 R: 02
Claimant: Respondent (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Starco, filed an appeal from a decision dated October 22, 2008, reference 02. The decision allowed benefits to the claimant, Richard Jacoby. After due notice was issued, a hearing was held by telephone conference call on November 12, 2008. The claimant participated on his own behalf. The employer participated by Owner Lee Moran.

ISSUE:

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

FINDINGS OF FACT:

Richard Jacoby was employed by Starco from January 24, 2008 until May 7, 2008, as a full-time truck driver. He suffered a seizure on May 6, 2008, and was notified by the neurologist he was not able to drive for the next six months due to Iowa Department of Transportation regulations. He informed the employer of this on May 8, 2008. He was not released to return to work by his physician until November 7, 2008.

Richard Jacoby was capable of doing other work besides driving during the course of his separation from Starco.

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".

The claimant was not able to drive until November 7, 2008, because he was prohibited from doing so under Iowa Department of Transportation regulations. However, he was not prohibited from doing other types of jobs during this time and is therefore able and available for work in the labor market generally.

DECISION:

The representative's decision of October 22, 2008, reference 02, is affirmed. Richard Jacoby was able and available for work in other occupations besides that of a truck driver between May 6 and November 7, 2008.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw