

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN MCEWEN
Claimant

APPEAL NO. 10A-UI-11242-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 06/27/10
Claimant: Appellant (1-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Allen McEwen, filed an appeal from a decision dated July 30, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 28, 2010. The claimant participated on his own behalf. The employer, Decker Truck Line, participated by Benefits Coordinator Andrea Kloberdanz, Human Brenda McNealey and was represented by John Fatino. Exhibits One, Two, Three were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Allen McEwen was employed by Decker Truck Line from beginning August 28, 2008, as a full-time over the road truck driver. His last day of work was May 13, 2010, because he suffered a stroke. The employer approved him for FMLA for the full 12-week period from May 15 until August 8, 2010. Under Federal Department of Transportation regulations he is prohibited from driving a commercial vehicle for one year after a stroke.

The claimant maintained his personal doctor has released him to return to other types of work but no documentation was provided regarding that release.

The employer discharged the claimant at the end of the 12-week period on August 9, 2010.

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".

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant was on a leave of absence for a non-work-related medical condition at the time he filed his claim for benefits. The medical documentation provided by the doctor for the FMLA indicated he would not be able to return to work as a driver for one year due to Federal Department of Transportation regulations. He has not presented any documentation from a physician to state what other types of work, other than driving a commercial vehicle, he is able to do or what, if any, restrictions there are on his work activity. He therefore cannot be considered as able and available for work.

The issue of the claimant's separation from employment has not been determined and should be remanded.

DECISION:

The representative's decision of July 30, 2010, reference 01, is affirmed. Allen McEwen is ineligible for unemployment benefits as he is not able and available to work. The claimant should provide medical documentation to Iowa Workforce Development from his physician about any release to return to work and any restrictions he may have as a result of his medical condition.

The issue of the claimant's separation from employment is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css