

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE A RUSSELL
Claimant

APPEAL NO: 06A-UI-08585-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**
Employer

OC: 06-25-06 R: 04
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2006, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on September 12, 2006. The claimant did participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed previously as a truck driver but had to quit due to non-work-related health problems. The claimant currently has work restrictions that limit him to walking only 500 or 600 feet before he would need to sit down and rest. He is also prohibited from standing for any length of time, any job that has a vibration component, no lifting over twenty-five pounds and no sitting over two hours. Additionally, the claimant wants to work only part-time hours so he will not jeopardize his social security benefits. The claimant has pulmonary problems that require he see a doctor every three months to have fluid drained off of his lungs.

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.

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 24.22(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.

871 IAC 24.23(22) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

The claimant's current work restrictions, particularly those against walking, standing and sitting make it almost impossible for him to find any type of work. The claimant was not able to articulate even one job he believed he would be able to perform, other than possibly riding on a lawn mowing machine, and then he admitted he would need to take frequent breaks. The administrative law judge also doubts that the claimant would be able to ride on a mower as he has a restriction from work that would expose him to vibration as a riding lawn mower certainly would.

Also, the claimant is not willing to work over part time so as not to endanger his social security disability benefits. The claimant has failed to establish that he is physically able to and available for work. Thus, benefits are denied.

DECISION:

The representative's decision dated August 18, 2006, reference 05, is affirmed. The claimant is not able to work and available for work effective June 25, 2006. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs