

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY R TRICKLE**  
Claimant

**APPEAL NO. 07A-UI-08086-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOLO OIL CO INC**  
Employer

**OC: 07/08/07 R: 04  
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

Jeffrey Trickle filed a timely appeal from the August 14, 2007, reference 01, decision that denied benefits effective July 6, 2007 and that concluded Mr. Trickle was not able to work. After due notice was issued, a hearing was held on September 10, 2007. Mr. Trickle participated. Debra Denker, Human Resources Manager, represented the employer. Exhibits One, Two, A and B were received into evidence. The parties waived formal notice of the issues related to the separation from the employment. The hearing in this matter was consolidated with the hearing in Appeal Number 07A-UI-08087-JT.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing the claim for benefits that was effective July 8, 2007.

Whether the claimant's involuntary separation from the employment disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeffrey Trickle commenced his full-time employment with Molo Oil Company on November 11, 1991 and was a full-time assistant manager and lube tech at the time he separated from the employment on June 26. Mr. Trickle's duties involved performing all of the services one associates with quick oil change enterprises. On December 11, 2006, Mr. Trickle commenced feeling the effects of what was later diagnosed as a ruptured disc in his neck. Mr. Trickle was on an approved medical leave of absence from December 20, 2006 through February 22, 2007. At that time, Mr. Trickle returned to work on light-duty status.

On May 17, 2007, Mr. Trickle's doctor provided Mr. Trickle with a full-release to return to work without restrictions effective May 29, 2007. Mr. Trickle promptly provided the release to the employer. Mr. Trickle's doctor had recommended to Mr. Trickle that he limit the work he performed with his hands and/or arms overhead. The doctor had not included this

recommendation in the written release. Approximately half of Mr. Trickle's work involved working with his hands and/or arms overhead. Mr. Trickle continued to perform his full duties from May 29 until June 22, 2007. During this period, Mr. Trickle did not request, and the employer did not provide, any work accommodations. However, Mr. Trickle experienced some difficulty when he was working "in the basement" underneath cars. This was intensive overhead work. Mr. Trickle noticed that after an hour or two of performing such work, he had difficulty with his grip and would feel numbness and tingling in his fingers. When Mr. Trickle was able to take a break, he was able to return to the overhead work and perform it with less difficulty for an hour or two, when the same symptoms would return.

On June 22, Mr. Trickle told Rick Eagan, lube shop operations manager, about his intermittent symptoms. Mr. Trickle advised Mr. Eagan that he was experiencing some difficulty in perform the overhead work and that the extent of his difficulty was related to the amount of time he spent in the basement working underneath cars. Mr. Eagan directed Mr. Trickle to speak with Human Resources Manager Debra Denker.

On June 22, Mr. Trickle met with Ms. Denker and provided the same information he had provided to Mr. Eagan. Mr. Trickle told Ms. Denker that he was concerned that if his hands were burned by something while he worked under a car, he might not feel it. Ms. Denker and Mr. Trickle reviewed the May 17 doctor's note that granted a full release without restrictions. Ms. Denker advised Mr. Trickle that he would need to cease working until his doctor provided further clarification regarding what tasks Mr. Trickle was and was not able to perform. Ms. Denker reiterated the employer's position on June 26 during another discussion with Mr. Trickle. Mr. Trickle saw his doctor and obtained a revised medical release, which Mr. Trickle prompted provided to Ms. Denker. This medical release stated, "Please limit overhead work as much as possible 7/1/07-9/30/07." On July 3, Ms. Denker and Mr. Trickle agreed to meet on July 6 to discuss his employment status and options.

On July 6, Ms. Denker, Mr. Trickle and Larry Snyder, General Manager, Lubricants Division, met to discuss Mr. Trickle's employment status. Mr. Snyder advised Mr. Trickle that the employer was not able to accommodate Mr. Trickle's medical restriction. Mr. Snyder provided Mr. Trickle with a letter that set forth the employer's position that Mr. Trickle was not able to perform the essential duties of his position. The letter indicated that Mr. Trickle has previously exhausted his available leave under the Family and Medical Leave Act. The letter advised Mr. Trickle that the employer was severing the employment relationship and that Mr. Trickle could reapply after September 30, 2007. Mr. Trickle had at no time expressed a decision to sever the employment relationship and desired to continue in the employment.

In response to the separation, Mr. Trickle established a claim for unemployment insurance benefits that was effective July 8, 2007. Mr. Trickle's doctor has imposed no other work restrictions since recommending that Mr. Trickle limit overhead work until September 30, 2007. Mr. Trickle is physically able to work and has sought positions in a restaurants, service stations or cashiering jobs.

## 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 24.22(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.

The weight of the evidence in the record indicates that Mr. Trickle is able to engage in gainful employment, regardless of whether he is able to perform all of the duties associated with his previous employment at Molo Oil. The administrative law judge concludes that Mr. Trickle has at all times since establishing his claim for unemployment insurance benefits met the able and available requirements set forth in Iowa Code section 96.4(3).

The employer readily concedes that Mr. Trickle's separation from the employment was involuntary. Though Mr. Trickle characterizes the separation as a layoff, the weight of the evidence indicates that the employer discharged Mr. Trickle from the employment. The evidence indicates that the discharge was not based on misconduct in connection with the employment. Accordingly, the discharge would not disqualify Mr. Trickle for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Trickle is eligible for unemployment insurance benefits effective July 8, 2007, provided he is otherwise eligible. The employer's account may be assessed for benefits paid to the claimant.

**DECISION:**

The Agency representative's August 14, 2007, reference 01, decision is reversed. The claimant has been able and available for work since establishing his claim for benefits. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, effective July 8, 2007, provided he is otherwise eligible. The employer's account may be assessed for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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