

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT C O'CONNOR
255 – 25TH AVE N
CLINTON IA 52732

GREAT RIVER BEND SERVICES INC
7440 VINE ST CT
DAVENPORT IA 52806

Appeal Number: 04A-UI-00268-CT
OC: 11/30/03 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Great River Bend Services, Inc. filed an appeal from a representative's decision dated January 2, 2004, reference 01, which held that Robert O'Connor satisfied the availability requirements of the law effective November 30, 2003. After due notice was issued, a hearing was held by telephone on January 30, 2004. Mr. O'Connor participated personally. The employer participated by Nikki Soto, Driver Development Manager. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. O'Connor began working for Great River Bend Services, Inc. on July 10, 2002. He was hired as a part-time driver in Clinton. He shared the job with another driver and they alternated working 16 hours one week and 24 hours the next.

The employer's drivers are required to pass a Department of Transportation (DOT) physical as a condition of employment. Mr. O'Connor was taken off work on November 20, 2003 because he failed the physical due to the fact that he was taking insulin for his diabetes. He was given 30 days in which to either pass the DOT physical or obtain a waiver allowing him to drive for the employer. Mr. O'Connor passed the physical on or about December 22. His former position had been filled by that point and the only work available was as a substitute driver, a position he accepted. In a letter dated December 24, he was advised of an opening for 5.5 hours every Sunday in Davenport. He did not bid on the opening because he did not feel it would be worthwhile to make the 80-mile round trip to Davenport for only 5.5 hours of work. On January 5, he was advised that the position in Davenport was still available and that two additional openings had become available. Both openings were in Davenport and one was for 10 hours per week and the other for 22.5 hours a week. Mr. O'Connor did not feel the opening for 10 hours would be financially feasible given the driving distance. He was interested in the opening for 22.5 hours but there was some question as to whether the opening would be absorbed into another driver's route. He did not bid on either opening.

Since passing the DOT physical, Mr. O'Connor worked on January 26 and will be filling in on a long-term basis for an employee who is scheduled to undergo surgery. He has remained available to accept employment with Great River Bend in a position comparable to the one he had prior to November 20, 2003. He is otherwise able to engage in other forms of employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. O'Connor satisfied the availability requirements of the law as of November 30, 2003. The provisions of Iowa Code Section 96.4(3) require that an individual be physically and mentally able to engage in some form of employment as a condition to receiving job insurance benefits. When Mr. O'Connor filed his claim, he was off work because he had failed the DOT physical. Although he was not able to work for this employer at the time, he retained the ability to perform other work. The fact that his diabetes was controlled by insulin did not render him unable to work for all employers, just Great River Bend. In order to satisfy the requirements of Section 96.4(3), an individual does not have to be able to perform his customary job, just some work which is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). The fact that Mr. O'Connor was working while taking insulin establishes that his medical condition did not preclude all work activity.

It is true that Mr. O'Connor has declined to bid on jobs available with the employer. However, his rejection of those jobs do not adversely effect his availability for work. He had been working in Clinton but was offered the opportunity to bid on jobs in Davenport, an 80-mile round trip from his home. Moreover, two of the jobs were for ten hours a week and less. It is questionable as to whether the third opening in Davenport was going to continue to be available. It was not unreasonable for Mr. O'Connor to decline work which was outside the area where he normally worked and which had far fewer hours than he had been working. He continued to be available to work in Clinton for an average of 20 hours per week.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. O'Connor satisfied the availability requirements of the law effective November 30, 2003. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated January 2, 2004, reference 01, is hereby affirmed. Mr. O'Connor satisfied the availability requirements of the law effective November 30, 2003. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf