BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

THEODORE J BRASMER	HEARING NUMBER: 17BUI-10656
Claimant	
and	EMPLOYMENT APPEAL BOARD
JONES COUNTY TRANSPORT LLC	
Employer	: :

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for November 3, 2017 in which the issue to be determined was whether the Claimant is able and available for work. At the hearing, the Claimant indicated that he could no longer drive a truck based on his medical condition. He was released to return to work with restrictions, but the Employer had no work available to accommodate his restrictions. The Claimant indicated he is able to perform other types of work that wouldn't strain his heart, and has in the past held other such positions prior to his medical condition.

The administrative law judge's decision was issued November 6, 2017, which determined that the Claimant was not able and available for work beginning on September 17, 2017 and denied benefits. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Claimant's being able and available for work is a week to week determination.

lowa 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:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

In addition, the law also provides that a person "...must be physically able and available for work, not necessarily in the individual's customary occupation, but in some *reasonably suitable, comparable, gainful, full-time endeavor...* that is generally available in the labor market..." (Emphasis added.) See, 871 IAC 24.22(1)"b."

Although the record establishes the Claimant is not currently able and available to drive a truck, the Claimant provided testimony that he is able to perform other work based on previous employment. He offered no corroborating evidence to support that he could perform other duties within his restrictions. Since we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence to determine whether the Claimant is able and available for other work. If the Claimant is able and available for other work, and he obtains other such employment, he must then work in and be paid wages for insured work equal to ten times his weekly benefit amount to requalify for benefits, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

DECISION:

The decision of the administrative law judge dated November 6, 2017 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

Kim D. Schmett

James M. Strohman