

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH M HEINLEIN
Claimant

APPEAL NO. 07A-UI-01978-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

**OC: 01/14/07 R: 03
Claimant: Appellant (2)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Joseph Heinlein filed an appeal from a representative's decision dated February 16, 2007, reference 02, which denied benefits based upon a finding that the claimant was not able to perform work and ineligible for benefits as of January 24, 2007. After due notice a telephone conference hearing was scheduled for and held on March 14, 2007. The claimant participated. The employer participated by Judy Larson, Director of Human Resources. Exhibits One and Two were received into evidence.

ISSUE:

At issue in this matter is whether the claimant is eligible to receive unemployment insurance benefits based upon his ability to work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds that Mr. Heinlein was employed as a full-time flatbed driver for the captioned employer from August 2006 until December 24, 2006 when he was separated from employment due to his inability to report for work because of a non work injury.

Mr. Heinlein had been off work with a back condition and provided documentation from a physician to the company verifying that he was unable to work due to his medical condition. On January 24, 2007, Dr. Flanery, M.D. issued a statement indicating that Mr. Heinlein's medical condition had drastically worsened in recent weeks and limited the claimant to a lifting limitation of no more than five pounds and also restricted the claimant from any stretching, bending, twisting or climbing activities and also required that the claimant alternate between sitting and standing at his "convenience." Based on the claimant's medical condition, his inability to perform his normal duties and the limitations that had been imposed by his physician, Mr. Heinlein was determined not to be able to work and thus, ineligible to receive unemployment insurance benefits.

Subsequently, the claimant was re-examined on February 23, 2007. It was determined by Dr. Flanery at that time that the claimant's condition had improved. His lifting limitation was

raised to ten pounds. His other limitations, although continued, were less restrictive (See Exhibit One). Mr. Heinlein is actually seeking employment in occupational fields that he believes have work requirements that meet the limitations that have been imposed by his physician.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

For the reasons stated, the administrative law judge finds that the claimant is able and available for work based upon the less restrictive work limitations imposed by the claimant's physician effective February 23, 2007. The evidence establishes that the claimant has actively and earnestly been seeking work in employment fields that have employment that would not normally violate the restrictions imposed most recently by the claimant's physician.

DECISION:

The representative's decision dated February 16, 2007, reference 02, is reversed as modified. The claimant is able to work effective February 23, 2007 and eligible to receive unemployment

insurance benefits, provided that he meets eligibility requirements. The claimant is not able to work from the period of January 24, 2007 through February 23, 2007 and is ineligible for unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs