

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL SIEVERDING

Claimant

APPEAL NO. 07A-UI-08228-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C E CONTRACTING LTD OF IOWA

Employer

**OC: 07/30/06 R: 03
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Michael Sieverding (claimant) appealed an unemployment insurance decision dated August 22, 2007, reference 10, which held that he was not eligible for unemployment insurance benefits because he was not able to work in his usual occupation with C E Contracting Limited of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2007. The claimant participated in the hearing. The employer participated through Lynn Alcott, Office Manager. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time truck driver in April 2006. He sustained a work-related injury to his rotator cuff and was taken off work from his treating physician on November 28, 2006. The claimant was released to return to work with permanent restrictions on July 23, 2007. He is limited in the amount of overhead work he does, he can lift 29 to 50 pounds frequently, and 50 to 100 pounds occasionally. However, he is not able to return to work due to a non-work-related medical condition of Type II Diabetes. As a condition of employment, the claimant is required to have a valid commercial driver's license. He can only obtain this license if he successfully passes a Department of Transportation (DOT) physical and is certified to drive. The claimant cannot pass his DOT physical because of this medical condition. He claims that he can work as a laborer, but the employer does not have any jobs that do not involve driving, and the claimant's ability to work as a laborer is also limited due to his permanent restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 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 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He is currently under medical care for a non-work-related medical condition and is unable to return to work because he cannot pass his DOT physical. The employer has no positions that do not involve driving, and the claimant's ability to perform as a general laborer is limited due to his permanent work restrictions. The claimant does not meet the availability requirements of the law and benefits are denied.

DECISION:

The unemployment insurance decision dated August 22, 2007, reference 10, is affirmed. The claimant has not established that he is able to work and is therefore not eligible for unemployment insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw