

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL D FINE**

Claimant

**APPEAL NO. 08A-UI-03325-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 01/06/08 R: 12  
Claimant: Respondent (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.3 (7) – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Heartland Express Inc. of Iowa filed a timely appeal from the March 25, 2008, reference 02, decision that allowed benefits and that concluded the claimant was able and available for work. After due notice was issued, a hearing was held on April 24, 2008. Claimant Michael Fine participated. Leah Peters, Human Resources Generalist, represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the fact-finding documents upon which the March 25, 2008, reference 02 decision was based. The administrative law judge took official notice of the administrative Law Judge decision in Appeal Number 08A-UI-01413-SWT. The parties waived formal notice on the overpayment issue and the administrative law judge took official notice of the Agency's records concerning benefits disbursed to the claimant.

**ISSUE:**

Whether the Workforce Development Claims Division had legal jurisdiction to overrule the administrative Law Judge decision that was entered March 13, 2008 in Appeal Number 08A-UI-01413-SWT, which decision concluded that the claimant was not able to work and available for work from the time he established his claim for benefits until February 25, 2008.

Whether the claimant has been able to work and available for work since February 25, 2008.

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 25, 2008, the claimant and the employer participated in an appeal hearing in Appeal Number 08A-UI-01413-SWT. The issues at that hearing were whether the claimant had been discharged for misconduct that would disqualify him for unemployment insurance benefits and whether the claimant was able to work and available for work. Both parties had an obligation to present all of the important information to Judge Wise during the hearing. On March 13, 2008,

Administrative Law Judge Steven A. Wise entered his decision based on the February 25, 2008 hearing. Judge Wise concluded that the claimant was discharged for no disqualifying reason and was eligible for unemployment insurance benefits, provided he was otherwise eligible. However Judge Wise concluded that the claimant had not been able to work and available for work since establishing his claim for unemployment insurance benefits. Judge Wise specifically considered the September 24, 2007 medical restrictions imposed by the claimant's chiropractor. Judge Wise found those restrictions to be severe and concluded that the restrictions prevented the claimant from performing full-time jobs available in the labor market. Both parties were duly notified of Judge Wise's decision and received a copy of that decision. Neither party appealed Judge Wise's decision.

Since the February 25, 2008 appeal hearing in Appeal Number 08A-UI-01413-SWT, the claimant has seen his chiropractor on one occasion, March 18, 2008. On March 21, 2008, the claimant's chiropractor drafted a memo that indicated the claimant was able to return to "some type of employment." However, the claimant's chiropractor indicated in the same memo that the claimant's medical restrictions remained unchanged from the restrictions imposed on September 24, 2007. The claimant has sought employment since he established his claim for benefits and continued to seek employment after December 25, 2007 appeal hearing. The claimant has documented his job contacts, which so far have not led to a job offer. The claimant has not disclosed his medical restrictions to prospective employers.

The claimant has received benefits totaling \$5,760.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated. See Iowa Code section 96.6(3). Judge Wise's findings of fact or law, conclusions, and decision are binding upon the parties. See Iowa Code section 96.6 (4). Accordingly, the employer is liable for benefits that are paid to the claimant. In addition, the Workforce Development Claims Division was without legal jurisdiction to disturb or modify Judge Wise's decision in Appeal Number 08A-UI-01413-SWT. Pursuant to Judge Wise's decision, the claimant was not able to work and/or available for work from the time he established his claim for benefits until the February 25, 2008 appeal hearing in Appeal Number 08A-UI-01413-SWT. The claimant was not eligible for unemployment insurance benefits from the effective date of his claim through February 25, 2008.

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, (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence in the record establishes that the claimant's severe medical restrictions have remained unchanged since September 24, 2007. The claimant's severe medical restrictions have remained unchanged since Judge Wise heard evidence on February 25, 2008 concerning the restrictions, as well as other evidence concerning the claimant's ability to work and availability for work. Accordingly, the administrative law judge concludes that the claimant has not met the work ability and work availability requirements of Iowa Code section 96.4(3) since the February 25, 2008 appeal hearing in Appeal Number 08A-UI-01413-SWT. The claimant has not been eligible for unemployment insurance benefits since February 25, 2008 and continues to be ineligible for benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant has received benefits for which he has been deemed eligible, those benefits constitute an overpayment that the claimant must repay to Iowa Workforce Development. The claimant is overpaid \$5,760.00.

**DECISION:**

The Agency representative's March 25, 2008, reference 02, is reversed. The administrative law decision entered in Appeal Number 08A-UI-01413-SWT was a final Agency decision that concluded the claimant was not able and available for work from the effective date of his claim through February 25, 2008 hearing date. The administrative law decision entered in Appeal Number 08A-UI-01413-SWT was a final Agency decision that concluded the separation from the employment did not disqualify the claimant for benefits and that concluded the employer's account may be charged for benefits paid to the claimant. The Workforce Development Claims Division representative was without legal jurisdiction to disturb or modify the administrative law decision entered in Appeal Number 08A-UI-01413-SWT.

The claimant has not been able and available for work since February 25, 2008 and continues not to be able and available for work. The claimant is not eligible for unemployment insurance benefits. The claimant is overpaid \$5,760.00.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs