

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GEORGE R CLARK
Claimant

APPEAL 15A-UI-07833-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 06/07/15
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 30, 2015, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on August 11, 2015. Claimant participated personally. Employer participated by Renee Meyers, Human Resources representative.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was working as an over the road truck driver. He had been employed by employer since September 27, 2013. Claimant was suffering from an injury that was not work-related and was placed on a medical leave on or about February 16, 2015. He went in for surgery and was released back to work with a lifting restriction.

Claimant was not released back to work without restrictions through May of 2015. Claimant requested office work as he had in the past with another employer. Employer did not grant his request. Employer decided to terminate claimant's employment on or about May 29, 2015. Claimant had not been released back to work without restrictions on that date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective June 7, 2015.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Since the employment ended on May 29, 2015, claimant is no longer obligated to return to employer upon his medical release to offer his services. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history. Since he has performed sedentary jobs within the work history, he is considered able to work even if he cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of June 7, 2015. Benefits are allowed.

Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The representative's decision dated June 30, 2015, (reference 01) is reversed. The claimant is able to work and available for work effective June 7, 2015. Benefits are allowed, provided he is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs