

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DARYL A PEDERSEN  
1742 VERNON VOS RD  
DENISON IA 51442

UNITED PARCEL SERVICE  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-00778-DWT  
OC: 12/05/04 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-d – Non-Work Related Injury  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed a representative's January 13, 2005 decision (reference 03) that concluded Daryl A. Pedersen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be subject to charge because after the claimant recovered from an injury he offered to return to work and the employer did not have work for him to do. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2005. The claimant participated in the hearing. Nancy Clark and Pam Swiatkiewicz, the supervisor, appeared on the employer's behalf. 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.

ISSUES:

Is the claimant eligible to receive unemployment insurance benefits as of December 5, 2004 after he offered to return to work on December 9?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 12, 1995. The claimant worked part time or 3.5 to 4 hours a day. The claimant worked as a pre-loader, which required him to repeatedly lift objects many of which were more than 70 pounds. The claimant injured himself and was unable to work in September 2004. Before a physician determined the claimant's injury was not covered under workers' compensation, the employer accommodated the claimant's work restrictions and had him work on a computer in the office. When it was determined the claimant's injury was not covered under workers' compensation, the employer could not make accommodations for the claimant.

In September 2004, the claimant requested a leave of absence since he could not perform his job duties. The employer granted the claimant a leave of absence for an indefinite time. The claimant qualified for disability benefits and began receiving these payments in September 2003. As of the date of the hearing, the claimant was still receiving disability benefits.

On December 7, 2004, the claimant's doctor released the claimant to return to work with some work restrictions. The claimant's work restrictions limited the claimant from lifting anymore than 30 pounds and prevented him from doing any repetitive lifting. Although on December 9, 2004, the claimant offered to return to work with these work restrictions, he could not perform his job as a pre-loader with these work restrictions. The employer did not have any work available until the claimant could perform his regular job.

The claimant established a claim for unemployment insurance benefits during the week of December 5, 2004. He filed claims for the weeks ending December 11, 2004 through February 12, 2005. He received his maximum weekly benefit amount of \$351.00 for the weeks ending December 18, 2004, through February 12, 2005. The claimant is not required to look for work.

REASONING AND CONCLUSIONS OF LAW:

If a claimant leaves employment upon the advice of a doctor because of a non-work related injury and the employer consents to the absence but upon recovering from the injury the claimant offers to return to work at his regular job or comparable suitable work and the employer does not have any work available, a claimant is not disqualified from receiving benefits. Iowa Code §96.5-1-d. The law presumes a claimant is not qualified to receive benefits if the claimant has not fully recovered from an injury so the claimant is unable to perform all the duties of his regular job. 871 IAC 24.25(35)(d).

The facts show the claimant received an injury, which prevented him from working in September 2004. The employer granted the claimant an indefinite leave of absence. The claimant's injury was not covered under the workers' compensation laws, but the claimant receives disability payments. The claimant's doctor released the claimant to work on December 7, with work

restrictions that prevented the claimant from performing his job as a pre-loader. As of December 7, 2004, the claimant had not fully recovered from his injury and he was unable to perform his job as a pre-loader. The claimant remains on a leave of absence until he can perform his regular job duties for the employer. As of December 5, 2004, the claimant is not eligible to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending December 18, 2004, through February 12, 2005; the claimant has been overpaid \$3,159.00 in unemployment insurance benefits he received for these weeks.

**DECISION:**

The representative's January 13, 2005 decision (reference 03) is reversed. The claimant offered to return to work, but he had not fully recovered from an injury and was unable to perform his job as a pre-loader as of December 9, 2004. Therefore, as of December 5, 2004, the claimant is not eligible to receive unemployment insurance benefits because he is still on a leave of absence and has not been released to perform his job duties as pre-loader. If the employer does not have any work for the claimant to do after he fully recovers, the claimant should reopen his claim and establish his eligibility to receive unemployment insurance benefits. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending December 18, 2004, through February 12, 2005. The claimant has been overpaid and must repay \$3,159.00 in benefits he received for these weeks.

dlw/pjs