

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L BROWN
Claimant

APPEAL NO. 08A-UI-10741-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 10/05/08 R: 12
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Michael L. Brown (claimant) appealed a representative's November 4, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Decker Truck Line, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 2, 2008. The claimant participated in the hearing. John Fatino, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Sandy Loney. and Doreen Coppinger. 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on August 15, 2007. He works full time as an over-the-road truck driver in the employer's transportation business. Beginning August 12, 2008 the claimant was off work, not returning until October 27. The claimant seeks unemployment insurance benefits for at least a portion of the time he was off work.

The claimant had an annual physical on August 12, as required by the federal department of transportation (DOT). The result of that physical was that it was likely that the claimant suffered from sleep apnea; the claimant was referred to his personal physician, and the diagnosis of sleep apnea was confirmed. Under DOT guidelines, a person cannot be authorized to drive with a diagnosis of apnea unless certain diagnostic and treatment protocols are followed. Specifically, the person is required to be referred to a sleep specialist or pulmonologist, and is required to wear a "CPAP" machine, a devise that both assists in breathing while sleeping and hence improves sleeping, and monitors its usage for later verification. The claimant completed the initial monitoring and treatment process as of October 24; he was released to return to work as of that date with a clear DOT health certification subject to the requirement of wearing the

CPAP machine while sleeping, but requested and was not returned to driving until October 27 due to a personal/family commitment.

During the time the claimant was off work, he had sought non-driving work with the employer and other employers. The employer's position is that it does not provide non-driving work to drivers who are under work restrictions unless it is related to a workers' compensation injury. The only restriction the claimant had during the time he was off work was that he could not work as an over-the-road truck driver. The employer considered the claimant to be on a leave of absence during the time he was off work despite the fact that the claimant had not affirmatively requested a leave of absence or completed any paperwork for a leave.

REASONING AND CONCLUSIONS OF LAW:

In order to be eligible the claimant must be able and available for work. Iowa Code § 96.4-3. A period of leave from employment can be determined to be a period of "voluntary unemployment" in which the claimant is considered not to be "able and available" for work. 871 IAC 24.22-2-j; 871 IAC 24.23-10. Whether the claimant requested the leave of absence or not, both parties understood that the claimant was off work due to a medical problem that was not caused or aggravated by the claimant's work for the employer. The claimant accepted the leave of absence, under which the claimant's position was held for him until he was able to obtain the DOT health certification and return to work. The claimant is deemed unavailable for work because he has been on a leave of absence at least implicitly agreed to by the parties.

DECISION:

The representative's November 4, 2008 decision (reference 01) is affirmed. The claimant was not able to work and available for work effective August 11, 2008 until October 27, 2008. The claimant is not qualified to receive unemployment insurance benefits during that period.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw