

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD D WILLARD
Claimant

APPEAL NO: 13A-UI-09697-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GARY D HEINS TRUCKING INC
Employer

OC: 07/28/13

Claimant: Respondent (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Gary D. Heins Trucking, Inc. (employer) appealed a representative's August 20, 2013 decision (reference 02) that concluded Donald D. Willard (claimant) was qualified to receive unemployment insurance benefits by being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 26, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-09696-DT. The claimant participated in the hearing. Chad Staton appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered 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:

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

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on about January 2, 2012. He worked full time as an over-the-road truck driver. His last day of work was July 19, 2013.

The claimant has diabetes. While persons with diabetes are typically barred from driving, the claimant had worked with his physician to control his diabetes; he did have a waiver from the Federal Motor Carrier Safety Administration of the United States Department of Transportation (DOT) that allowed him to continue to drive even with his diabetes, but the waiver required that the claimant submit to quarterly evaluations by his doctor, and the waiver was subject to being removed if he had any hypoglycemic events.

The claimant had a hypoglycemic event in early June 2013. When he had his regular quarterly evaluation with the doctor on June 18, he reported the event. The doctor reported this to the DOT. As a result, the DOT issued a letter dated June 25, 2013 which informed the claimant that he was not medically qualified to operate a commercial vehicle for a year from the hypoglycemic event.

The claimant received this letter when he returned home on the evening of July 19. He immediately called the employer's manager, Staton, and informed him that his exemption had been rescinded and that he would not be able to drive for the employer for a year.

Currently, the claimant is looking for all types of work; he has no other restrictions on his ability to work other than not being able to drive a commercial vehicle.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1); 871 IAC 24.23(19). The evidence shows that while the claimant is not able to work as an over-the-road driver, he is not looking for this type of work. Instead, he is looking for work that he is capable of doing. The claimant has demonstrated that he is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's August 20, 2013 decision (reference 02) is affirmed. The claimant is able to work and available for work effective July 28, 2013. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs