

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD H SCHWARTZKOPF**  
Claimant

**APPEAL NO. 10A-UI-02765-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TWIN BRIDGES TRUCK CITY INC**  
Employer

**OC: 01/02/10**  
**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 9, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2010. Claimant participated. Employer participated by Mike Marbury, service manager, and Susan Jarvis, president. The record consists of the testimony of Ronald Schwartzkopf; the testimony of Susan Jarvis; the testimony of Mike Marbury; and Employer's Exhibits 1-2.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a heavy duty truck dealer. In addition to selling trucks, the employer provides a full range of repair services. The claimant was hired as a heavy duty mechanic on March 3, 2009. The claimant's last day of work was August 17, 2009. He was terminated on November 17, 2009.

The events that led up to the claimant's termination began on or about August 1, 2009. The claimant was diagnosed with Crohn's disease and irritated bowel syndrome. The claimant missed work but was not taken off work completely by his physician until August 18, 2009. The employer held open the claimant's job for him and continued his insurance, even though he was not able to come to work. The hope was that the claimant would be released by his physician. By November 17, 2009, the claimant had still not been released to return to work and his employment was terminated. He was informed that he could contact the employer if he got a full duty release as the employer wanted him back as a technician in its service department. (Exhibit 1) The claimant's illness is not work related.

The claimant was given a release to return to work with restrictions on or about January 4, 2010. His restrictions included no heavy lifting and no repetitive climbing or bending. The claimant could not work as a heavy duty mechanic. He could work as a service provider and has applied for positions at Hy-Vee and Wal-Mart to run cash registers and do administrative work. He is a high school graduate and has some college education. He is actively looking for work.

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

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Although the employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, the involuntary termination from employment while under medical care was a discharge from employment. Since the claimant was still under medical care and had not yet been released to return to work without restriction as of the date of separation, no disqualifying reason for the separation has been established. Benefits are allowed, provided claimant is otherwise eligible.

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 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.

871 IAC 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.

Inasmuch as the medical condition was not work-related but employer involuntarily terminated the employment before he was released to return to work with or without restriction, the claimant has established his ability to and availability for work effective January 4, 2010.

**DECISION:**

The February 9, 2010 (reference 01) decision is modified in favor of the claimant. The claimant was discharged for no disqualifying reason. Claimant is able to and available for work effective January 4, 2010. Benefits are allowed, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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