

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSIE J CONCHAS**  
Claimant

**APPEAL NO. 09A-UI-07512-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER TRUCK LINE INC**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant ( 5)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 11, 2009, reference 01, decision that found the claimant unable to work and denied benefits. After due notice was issued, a telephone conference hearing was held on June 10, 2009. Claimant participated. Employer participated through Sandy Loney, Doreen Coppinger and was represented by Drew Gentsch, Attorney at Law. Exhibit 1, pages 1 through 33, was admitted into evidence.

**ISSUE:**

The issue is whether claimant is able to and available for work from February 16, 2009 through May 6, 2009.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a short haul truck driver. He must have a Commercial Driver's License (CDL) to work for the employer. As part of his licensing for his CDL, he is required to pass medical exams on a regular basis. On February 16, 2009 during a medical exam by Dr Milani, the claimant was identified as possibly having sleep apnea. He was given a three month conditional CDL and continued to work for his employer. The claimant went to his doctor, Dr. Cheema, and was formally diagnosed as having obstructive sleep apnea on April 8, 2009. With a diagnosis of sleep apnea, the claimant's CDL was suspended. The claimant was fitted with a CPAP device to assist with the claimant's sleep on April 20, 2009. In a letter dated May 5, 2009, Dr Cheema, stated that as long as the claimant was compliant with his CPAP he can restart work anytime. The employer obtained a release from Dr Miliani on May 6, 2009 and the claimant was allowed to return to work after that day.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from April 8, 2009 through May 6, 2009

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".

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant was released to return to work by Dr. Milani on May 6, 2009. Dr. Milani was examining the claimant for his ability to work and retain his CDL. The letter from Dr. Cheema does not refer to any standards for CDL. The recommendations for Medical Examiners allow drivers with sleep apnea to have a minimum two weeks of treatment before returning to work. The claimant could not work until he was released by Dr Milani. The claimant was able to and did work from February 16 through April 7, 2009. The claimant was not able and available for work between April 8 and May 6, 2009.

**DECISION:**

The May 11, 2009, reference 01, decision is modified. The claimant is not able to work and available for work from April 8, 2009 through May 6, 2009.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/pjs