

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN HOUSE
Claimant

APPEAL NO. 07A-UI-07095-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REED & REED INC
Employer

**OC: 09/10/06 R: 03
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

John House (claimant) appealed an unemployment insurance decision dated July 13, 2007, reference 06, which held that he was not eligible for unemployment insurance benefits because he was granted a leave of absence from Reed & Reed, Inc. (employer) and is not available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2007. The claimant participated in the hearing. The employer participated through Teresa Simpson, Office Manager, and Kelly Simpson, Secretary. 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:

The issue is whether the claimant is able and available to work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a sweeper truck driver on September 30, 2006, and he was most recently working full-time. He was injured in a non-work-related injury on June 7, 2007 and was taken off work by his treating physician. The claimant was released with light duty restrictions on July 10, 2007 but was not available to drive until July 24, 2007, when he was given a release to drive.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

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.

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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He was injured in a non-work-related injury on June 7, 2007 and was taken off work by his treating physician. The claimant was released with light duty restrictions on July 10, 2007 but was not able to return to work driving until July 24, 2007, when he was given a release to drive. The claimant does not meet the availability requirements of the law for the six-week period ending July 21, 2007. Benefits are denied during that same time.

DECISION:

The unemployment insurance decision dated July 13, 2007, reference 06, is affirmed. The claimant was not able and available to work, and benefits are denied from June 16, 2007 through July 21, 2007.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw