

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFRED L WINSTON
Claimant

APPEAL NO. 09A-UI-08981-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES AREA COMM COLLEGE
Employer

**Original Claim: 04/26/09
Claimant: Appellant (1)**

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Alfred L. Winston (claimant) appealed a representative's June 12, 2009 decision (reference 01) that concluded he was not able to work in his occupation with his permanent medical restrictions. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2009. The claimant participated in the hearing. Michael Galloway, attorney at law, represented the employer. Mike Wilkinson, Sandy Tryon, Sue Ayers, Martha Henrichs, and Diane Sand were present as witnesses for the employer. During the hearing, Claimant Exhibit A and Employer Exhibits One, Two, and Three were offered and admitted as evidence. The claimant's physician's letters on February 6 and 19 and July 2 were read into the record. 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 able to and available to perform work in his occupation with the medical restrictions his physician has noted?

FINDINGS OF FACT:

The claimant has worked for the employer as an Employment and Training Specialist. (Employer Exhibit Three.) This job requires the claimant to type and write out by hand some forms or reports by hand. On October 30, 2008, the claimant made a request that the employer make some accommodations for his disability. The claimant requested that he not make any presentations and that he have a low caseload. The claimant did not ask for any equipment, aides, or services. (Employer Exhibit One.)

The claimant met with employer in mid-December 2008 after the employer determined the claimant was not able to perform the essential functions of his job. Although the claimant did not want to go on a leave of absence under the Family Medical Leave Act, the employer placed the claimant on a medical leave as of December 17, 2008. The claimant submitted the necessary forms that were completed by his doctor and he was granted a medical leave of absence through April 16, 2009.

The claimant's doctor provided two letters to the employer. A February 6, 2009 letter stated the claimant was permanently disabled as the result of medical conditions the claimant had and these conditions did not allow him to type, consistent with use of hands or frequent finger movements. (Employer Exhibit Two.) The February 19 letter was a duplicate of the February 6 letter with the following added sentence: Mr. Winston is totally disabled from his occupation with current employer and other employers.

The claimant established a claim for benefits during the week of April 26, 2009. The employer did not receive any other statements from the claimant's doctor. However, on July 2, the claimant had an appointment and his physician, Dr. Lee, indicated the claimant still had the same permanent disabilities. Dr. Lee, however, stated on July 2 that the claimant was capable of performing jobs within his occupational class with reasonable accommodations. Dr. Lee does not state what accommodations must be made for the claimant.

The claimant established a claim for benefits during the week of April 26, 2009. The claimant has filed weekly claims since he established his claim. The employer issued the claimant an employment contract in late June 2009.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The claimant has the burden to establish he is able to and available for work. Iowa Code § 96.6-2.

The claimant has some permanent disabilities that may or may not make him able to work. In February 2009, the claimant's physician specifically stated the claimant could not type or have frequent finger movements and the claimant was totally disabled from his occupation with the current employer. Since the claimant's occupation requires him to use a computer and write up certain information, as of February the claimant was not able to or available to perform the job duties in his usual occupation. Since February, the claimant has been taking medication, which may have been the reason Dr. Lee on July 2 stated the claimant was capable of performing his job duties in his occupation, but with accommodations.

Since the claimant initially went on a medical leave of absence because he could not do the typing or writing necessary to do his job and Dr. Lee specifically stated he was not able to type and was totally disabled from his occupation with the employer on February 19, the claimant or his physician must explain what specific accommodations the claimant needs to do his job. Also, the claimant's physician must indicate that as of a certain date the claimant is capable of typing and writing. Until Dr. Lee states in writing that the claimant can type and write or specifies specific work restrictions, the claimant's mere assertion he can type and write to the extent that he can perform the essential function of his job duties does not meet his burden to overcome his physician's February 6 and 19 statements that he is totally disabled. Also, since Dr. Lee has stated in vague, general terms the claimant needs accommodations, Dr. Lee needs to list what specific accommodations, in detail, the claimant needs to perform his job.

If the claimant obtains a doctor's statement in accordance with this decision, he needs to provide a copy to the employer so the employer and claimant can determine if the claimant's condition has improved to the extent he is now capable of performing the essential functions of his job as it currently exists. The claimant also needs to provide a copy of a new doctor's statement that is specific in accordance with this decision and if there are any work restrictions or accommodations the doctor specifies, the claimant must show the Department that he is not looking for a tailor-made job that restricts the type of job he can perform.

During the hearing, the claimant indicated an accommodation the employer could make was to hire someone to do his typing and writing. This is not a reasonable accommodation for the employer to make. Instead, this accommodation supports the premise that the claimant is unable to perform his usual occupation, because his job requires another person to perform the claimant's typing and writing requirements.

A preponderance of the evidence presented during the hearing establishes that as of July 9, 2009, the claimant is not able to perform the essential job duties in his usual occupation. If the claimant obtains a doctor's statement that specifically lists what, if any, work restrictions he has, that he can type and write, and the specific accommodations the claimant needs to perform his job, he needs to provide this to the employer and to Department so a decision can be made based on new information if he is able to work. Until such a doctor's statement is presented, the claimant remains unable to work in his usual occupation and is ineligible to receive unemployment insurance benefits.

DECISION:

The representative's June 12, 2009 decision (reference 01) is affirmed. The claimant has not established that he is able to work in his usual occupation after his doctor, in February 2009, indicated he was totally disabled to perform his work with the employer. Therefore, the claimant remains ineligible to receive benefits as of April 26, 2009. To establish his eligibility to receive benefits, the claimant must present the Department with a doctor's statement that specifically states what, if any, work restrictions he has; such as the amount of typing and/or writing he can do in a day; and what, if any, specific accommodations the claimant needs to perform his job. When the claimant obtains such a doctor's statement, the Department can re-evaluate his ability to work in his usual occupation.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw