

-DECISION-

Claimant:
JEFFREY MATHER

Decision No.: 744-BH-06

Date: April 26, 2006

Appeal No.: 0524061

Employer:
MCELROY TRUCK LINES INC

S.S. No.:

L.O. No.: 61

Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland Code, Labor and Employment Article, Title 8 Section 903.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: May 26, 2006

- APPEARANCES -

FOR THE CLAIMANT:
Present
Brian Maul-Atty

FOR THE EMPLOYER:
Jeff Ayres-Atty
Rudy Evans-Terminal Mgr.

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed full-time as an over the road truck driver for Mc Elroy Truck Lines. On August 23, 2005 the claimant was hospitalized in the intensive care unit being diagnosed with diabetes. The claimant was diagnosed with Insulin Dependent Type II Diabetes. When the claimant was discharged from the hospital he reported his condition to his employer. Federal law prohibits individuals that are diabetic and taking insulin from operating as commercial truck drivers. The employer had no other alternative than to terminate the claimant. The employer tried to find another position within the company other than as a commercial truck driver however, none could be found.

CONCLUSIONS OF LAW

Section 8-903 provides that a claimant must be able to work available to work and actively seeking work in each week for which benefits are claimed.

The claimant has met his burden in this case and clearly is capable of returning to the workforce on a full time basis.

The claimant was never barred from full time employment. See claimant's Exhibit B2. The claimant is only barred from working as a commercial truck driver.

DECISION

IT IS HELD THAT the claimant is able to work, available for work and actively seeking work written the meaning of Md. Code Annotated Labor & Employment Article, Title 8 Section 9-3. Benefits are allowed from the week beginning October 30, 2005.

The decision of the Hearing Examiner is reversed.