

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD E FISCHER**  
Claimant

**APPEAL NO: 11A-UI-07757-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 01/16/11**  
**Claimant: Appellant (4/R)**

Iowa Code § 96.4(3) – Availability for Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's June 2, 2011 determination (reference 02) that held him ineligible to receive benefits as of April 3, 2011, because he worked enough hours to be considered employed. The claimant participated in the hearing. Sandy Matt, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of April 3, 2011, because he requested home time April 2 through 9.

**ISSUE:**

As of April 3, 2011, is the claimant working reduced hours to be eligible to receive partial benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2010. He worked as a full-time over-the-road team driver. The claimant established a claim for benefits during the week of January 16, 2011. He reopened this claim during the week of April 3, 2011. His maximum weekly benefit amount is \$390.00.

The claimant did not work the week of April 3 because he requested home time April 2 through 9. The week of April 10, the claimant drove April 12 through 16. He earned \$305.10 in gross wages. The week of April 17 he drove all week and earned \$536.00 in gross wages. The week of April 30, the claimant drove all week and earned \$574.00 in gross wages. The week of May 1, the claimant drove all week and earned \$840.00 in gross wages. The week of May 8, the claimant drove on May 10 and earned \$82.00. After making a delivery on May 10, the claimant asked for two days of home time. When the claimant was available to work on May 13, his co-driver was not available to return to work. Even though the employer gave the claimant a list of co-drivers to contact so he could return to work, the claimant decided to wait until his co-driver was available. The claimant returned to work the week of May 15 and drove May 16 through 21. He earned gross wages of \$569.00. He drove every day the week of May 23 and drive June 1 through 4.

The claimant filed weekly claims for the weeks ending April 9 through June 4, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim, he must be able to and available for work. Iowa Code § 96.4(3). The evidence shows the claimant was not available to work the week ending April 9 because he requested home time or vacation this week. As a result, the claimant is not eligible to receive benefits for the week ending April 9, 2011.

The week ending April 16, the claimant is eligible to receive partial benefits because he earned less than his maximum weekly benefit amount and did not drive every day. The weeks ending April 23, 30 and May 7, the claimant worked full time because he drove every day those weeks. Also, his gross weekly earnings exceeded his maximum weekly benefits amount. (871 IAC 24.18.)

For the week ending May 14, the claimant earned \$82.00 for a delivery made on May 10. He then requested two days of home time. Since the claimant was available to work the majority of that week, he is eligible to receive partial benefits this week. The claimant and his co-driver then drove May 16 through 21. The claimant earned gross wages of \$569.00 for the week ending May 21. He drove all week for the weeks ending May 28 and June 4. Since the claimant worked full time the weeks ending May 21, 28 and June 4, and earned excessive wages during the week ending May 21, he is not eligible to receive benefits for these weeks.

An issue of overpayment is remanded to the Claims Section to determine the amount the claimant has been overpaid from April 3 through June 4 based on the facts in this decision.

**DECISION:**

The representative's June 2, 2011 determination (reference 02) is modified in the claimant's favor. The claimant is eligible to receive to receive partial benefits for the weeks ending April 16 and May 14, provided he meets all other eligibility requirements. The claimant is not eligible to receive benefits for the week ending April 9, because he requested home time or vacation this week. He is not eligible to receive benefits for the weeks ending April 23, 30 May 7, 21, 28 and June 4, because he worked full time and had excessive earnings. The issue of overpayment is **Remanded** to the Claims Section to determine the amount the claimant had been overpaid for these weeks that is consistent with the facts in this decision.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs