

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD THOMAS**  
Claimant

**APPEAL NO: 11A-UI-02743-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MRF SALES & LEASING INC**  
Employer

**OC: 01-09-11**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 3, 2011, reference 01, decision that determined he was not able and available for work effective January 9, 2011, and denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 29, 2011. The claimant participated in the hearing. Mark Fallon, President, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Agency determined the claimant was not able and available for work effective January 9, 2011. The claimant was employed as a part-time route driver for D & S Trucking who contracted with the United States Postal Service (USPS) until September 1, 2010, when that company went out of business and MRF Sales & Leasing bid on their contracts with USPS. The claimant was on a layoff from D & S Trucking at the time and MRF assumed most of the drivers, including the claimant who was classified as a fill-in driver. The claimant's wife was in the hospital and was released October 1, 2010, and needs someone to be with her on a nearly constant basis. When the employer would call the claimant to fill-in for a driver he would generally need to start at 4:00 a.m. and while he was reluctant to leave his wife alone at that hour he never refused an assignment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

The claimant is able and available for work effective January 9, 2011. Although his wife was ill he never refused an assignment. Accordingly, benefits are allowed.

**DECISION:**

The March 3, 2011, reference 01, decision is reversed. The claimant is able to work and available for work effective January 9, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs