

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY G BOLEN
Claimant

APPEAL NO. 12A-UI-04671-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 01/15/12
Claimant: Appellant (2)

Section 96.4-3-a – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 20, 2012, reference 02, which denied unemployment insurance benefits as of January 15, 2012, finding the claimant was not able to work due to illness. After due notice, a telephone hearing was held on May 16, 2012. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Randy Bolen was employed by CRST Van Expedited, Inc. as an over-the-road tractor/trailer driver until October 24, 2011 when he was separated from employment because the employer expected Mr. Bolen to pay for a sleep apnea test and a sleep apnea machine before the claimant could continue his employment with the company as an over-the-road driver. The employer imposed the sleep study and sleep apnea machine by its own decision separate from the medical physical that Mr. Bolen was required by law to undergo before issuance of a DOT medical card. The claimant is eligible to return to CRST after he obtains the sleep apnea test and machine.

Mr. Bolen is otherwise healthy and has actively and earnestly been seeking work with other perspective employers in a variety of occupational fields.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is able and available for work. It does.

Iowa Code section 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".

In this matter the claimant was determined not to be medically able to drive an over-the-road tractor/trailer truck for a specific employer based upon the employer's self-imposed requirement that the claimant obtain a sleep apnea test and a sleep apnea machine. This requirement is not mandated by DOT and does not prevent the claimant from seeking or accepting other employment. The evidence in the record establishes the claimant is actively and earnestly seeking work in a variety of perspective employment fields and that the claimant is not burdened by illness or injury which prevents him from being actively employed in the labor market. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 20, 2012, reference 02, is reversed. Claimant is able and available for work. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs