

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNNIE E DANIELS**  
Claimant

**APPEAL NO. 12A-UI-11667-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 08/12/12**  
**Claimant: Respondent (4)**

Section 96.4-3 – Able and Available for Work  
Sections: 96.5-5(b) – Workers’ Compensation Temporary Disability Benefits  
871 IAC 24.13(3)d – Workers’ Compensation Temporary Disability Benefits

**STATEMENT OF THE CASE:**

CRST Van Expedited (employer) appealed a representative’s September 19, 2012 decision (reference 01) that concluded Johnnie Daniels (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was scheduled for October 23, 2012. The claimant participated personally. The employer participated by Sandy Matt, Human Resource Specialist.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 1, 2011, as a full-time over-the-road driver. On February 6, 2012, the claimant suffered a work-related injury and was restricted from working. He received temporary total disability payments from workers’ compensation of \$703.82 every two weeks. On July 25, 2012, the claimant was released to return to work without restrictions and his disability payments ceased.

The claimant filed for unemployment insurance benefits with an effective date of August 12, 2012. He received unemployment insurance benefits for the two-week period ending August 26, 2012. On August 29, 2012, the claimant was again under a doctor’s care and restricted from working and began receiving his temporary total disability payments again. On October 11, 2012, he broke his arm again. Surgery has not been scheduled at this time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was able and available for work for the two-week period ending August 26, 2012.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work without restrictions by his physician for the two-week period ending August 26, 2012. He is considered to be available for work during those two weeks because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits for those two weeks.

Iowa Code section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

871 IAC 24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

The claimant has and is receiving total temporary disability. The claimant's unemployment insurance benefits would be reduced by the receipt of temporary disability funds from workers' compensation. The claimant is not eligible to receive unemployment insurance benefit while receiving total temporary disability funds.

**DECISION:**

The representative's September 19, 2012 decision (reference 01) is modified in favor of the appellant. The claimant is not disqualified from receiving unemployment insurance benefits for the two-week period ending August 26, 2012. The claimant is disqualified from receiving unemployment insurance benefits after August 26, 2012, because he is not able to work for the employer.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs