

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DOUGLAS M CASEY
Claimant

LANDES TRUCKING
Employer

APPEAL 14A-UI-10152-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/17/14
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 23, 2014, (reference 02) unemployment insurance decision that denied benefits finding him not able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on October 20, 2014. Claimant participated. Employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a truck driver. Every year he must pass his DOT physical in order to keep driving. For the last twenty-six years the claimant has driven without issue despite being born with congenital club feet. This year the DOT required that he see a certified orthopedic specialist to receive clearance to drive. As this was a new requirement it took the claimant much longer to have the paperwork filled out by the medical providers as the first surgeon he saw was not considered certified by the DOT and they would not accept his opinion. The claimant's physical condition has remained the same while he waited for the paperwork to go through. The claimant received unemployment insurance benefits for the two weeks ending August 30, 2014 while he waited for the new paperwork requirements to be completed.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant has no medical restriction or other limitation on his employability and has received his certification from the DOT. The claimant was at all times physically able to and available for work, it was only the new DOT requirement that held up his DOT certification. Under these circumstances he was able to and available for work effective August 17, 2014. Accordingly, benefits are allowed.

DECISION:

The September 23, 2014, reference 02, decision is reversed. The claimant is able to work and available for work effective August 17, 2014. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs