

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE L EGBERT
Claimant

APPEAL NO. 08A-UI-02080-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIRCLE B EXPRESS INC
Employer

**OC: 03/04/07 R: 03
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 21, 2008, reference 03, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on April 15, 2008. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant went off work due to an injury November 27, 2007. Claimant was released to return to work on December 13, 2007. Claimant called the employer four times in December asking for work but none was offered. Employer promised claimant that he would be called when his truck was ready. Claimant finally started looking for other work because the employer did not have his truck ready and would not respond to his calls for work.

REASONING AND CONCLUSIONS OF LAW:

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".

Inasmuch as the treating physician has released the claimant to return to work, the claimant has established the ability to work. Claimant's telephone records showing multiple calls to the employer in December 2007 indicate he was willing to return to work. Benefits shall be allowed effective January 13, 2008.

DECISION:

The decision of the representative dated February 21, 2008, reference 03, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective January 13, 2008, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css