

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD T TAYLOR
Claimant

APPEAL NO. 13A-UI-11832-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 06/23/13
Claimant: Appellant (4)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 8, 2013, reference 03, decision that denied benefits effective August 18, 2013, based on an agency conclusion that the claimant was not able to perform work due to illness. After due notice was issued, a hearing was held on November 14, 2013. Claimant participated. Renae Myers represented the employer. Exhibits A through G were received into evidence. The administrative law judge took official notice of the agency's administrative record of the claimant's attempts to collect benefits for the period of June 23, 2013 through October 19, 2013. The administrative law judge took official notice of the agency's administered record of docketed decisions affecting the claimant's claim for benefits. The administrative law judge took official notice of the administrative law judge decision in Appeal Number 13A-UI-08784-BT. The administrative law judge took official notice of the October 8, 2013, reference 02, decision that allowed benefits to the claimant, provided he was otherwise eligible, in connection with an August 23, 2013 separation from Heartland Express Inc. of Iowa.

ISSUE:

Whether the claimant has been able to work and available for work since his August 23, 2013 separation from Heartland Express Inc. of Iowa.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gerald Taylor established a claim for benefits that was effective June 23, 2013. On July 22, 2013, a Workforce Development representative entered a reference 01 decision that held Mr. Taylor was not eligible for unemployment insurance benefits because he was on an approved leave of absence with Heartland Express Inc. of Iowa, which was then his current employer. Mr. Taylor appealed that decision. On September 3, 2013, Mr. Taylor and the employer participated in an appeal hearing in appeal number 13A-UI-08784-BT. On September 9, 2013, Administrative Law Judge Susan Ackerman entered a decision that denied benefits effective June 23, 2013, based on the conclusion that Mr. Taylor, an over-the-road truck driver, had been unable to work after a May 8, 2013 stroke that made him ineligible to operate a tractor-trailer rig under federal Department of Transportation regulations.

On October 8, 2013, a Workforce Development representative entered a reference 02, decision that held Mr. Taylor had been discharged for no disqualifying reason on August 23, 2013 based on absences due to illness that were properly reported to the employer. The employer did not appeal the decision and it became a final agency decision.

At all times since his separation from the employment on August 23, 2013, Mr. Taylor has been released to perform work other than operating a tractor-trailer rig or operating heavy equipment. Mr. Taylor has a background in restaurant management and since his separation from Heartland Express has sought work in that field. Since his separation from the employment, Mr. Taylor has made at least two job contacts per week.

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".

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 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.

Prior to the August 23, 2013 separation from Heartland Express, Mr. Taylor was obligated to make himself available for work with that company. During the week that ended August 24, 2013, Mr. Taylor was not in fact available for work with that company, or within the meaning of the law, and did not meet the availability requirement. Benefits are denied for the week ending August 24, 2013.

The weight of the evidence indicates that subsequent to the August 23, 2013 discharge from Heartland Express Inc. of Iowa, Mr. Taylor has at all times been released by his doctor to perform work other than operating a tractor-trailer rig or operating heavy equipment. The weight of the evidence indicates that Mr. Taylor meets the work ability requirement and has made himself available for work since the August 23, 2013 separation. Mr. Taylor has experience and abilities in restaurant management and has sought work in that field by making a minimum of two job contacts per week. Since the separation from the employment, Mr. Taylor has not been on a leave of absence and is not obligated to be available for work with Heartland Express. Effective August 25, 2013, Mr. Taylor has met the work ability and availability requirements. Effective August 25, 2013, Mr. Taylor is eligible for benefits provided he meets all other eligibility requirements. Mr. Taylor continued to be eligible for benefits through the November 14, 2013 appeal hearing date, provided he was otherwise eligible.

DECISION:

The Agency representative's October 8, 2013, reference 03 is modified as follows. The claimant did not meet the work availability requirement during the week that ended August 24, 2013 and was not eligible for benefits for that week. Effective August 25, 2013, the claimant has been able and available for work and is eligible for benefits, provided he meets all other eligibility requirements. The claimant continued to be eligible for benefits through the November 14, 2013 appeal hearing date, provided he was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs