

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONAL C BRADLEY**  
Claimant

**APPEAL NO. 07A-UI-07353-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRUCK COUNTRY OF IOWA INC**  
Employer

**OC: 07/01/07 R: 03**  
**Claimant: Appellant (4)**

Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Donald Bradley filed a timely appeal from the July 27, 2007, reference 02, decision that denied benefits effective July 1, 2007 and that concluded he was unable to perform work due to an injury. After due notice was issued, a hearing was held on August 15, 2007. Mr. Bradley participated. Jim Kane, Parts Manager, represented the employer. The administrative law judge took official notice of the July 27, 2007, reference 01, decision that allowed benefits based on a June 27, 2007 separation from Truck Country of Iowa Inc. The employer has appealed that decision and the appeal hearing is scheduled for August 21, 2007. The administrative law judge also took official notice of the August 1, 2007, reference 04, decision that allowed benefits effective July 15, 2007, and which indicated Mr. Bradley was able to work and available for work as of July 15, 2007. Exhibits One and A were received into evidence.

**ISSUE:**

Whether the claimant was able to work and available for work from July 1, 2007 through July 14, 2007.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Donald Bradley separated from employment with The McCoy Group Inc./Truck Country of Iowa on June 29, 2007. Donald Bradley established a claim for benefits that was effective July 1, 2007. A July 27, 2007, reference 01, decision allowed benefits based on a June 27, 2007 separation from Truck Country of Iowa Inc. The employer has appealed that decision and the appeal hearing is scheduled for August 21, 2007. A July 27, 2007, reference 02, decision denied benefits effective July 1, 2007 and concluded that Mr. Bradley was unable to perform work due to an injury. An August 1, 2007, reference 04, decision allowed benefits effective July 15, 2007, and concluded that Mr. Bradley was able to work and available for work as of July 15, 2007.

On May 24, 2007, Mr. Bradley underwent heart bypass surgery. During the period of May 24 through June 25, Mr. Bradley was recovering from the surgery and was completely unable to work. On June 26, Mr. Bradley saw his doctor, who told Mr. Bradley that he could return to work with a 30-pound lifting restriction. After the June 29 separation from the employment with Truck

Country of Iowa, Mr. Bradley commenced his work search on July 10 or 11, 2007. On July 30, 2007, after the July 26 fact-finding interview and in preparation for the appeal hearing, Mr. Bradley obtained a medical release from his doctor, which release indicates that Mr. Bradley was released to work without restrictions effective July 13, 2007.

### **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, (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.

(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.

(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 greater weight of the evidence indicates that Mr. Bradley was able, effective June 26, 2007, to perform work that did not conflict with a 30-pound lifting restriction. Regardless of whether

Mr. Bradley could perform his duties at Truck Country of Iowa with such a restriction, there would be other employment opportunities in the local labor market that would not conflict with a 30-pound lifting restriction. Accordingly, the administrative law judge concludes that Mr. Bradley met the work ability requirements of Iowa Code section 96.4(3) as of July 1, 2007, the effective date of his claim. However, the evidence indicates that Mr. Bradley did not commence a work search until midway through the benefit week that ended July 14, 2007. Thus, during the benefit week that ended July 7, 2007, Mr. Bradley did not meet the availability or active and earnest search requirements during that week and would not be eligible for benefits for that week. The greater weight of the evidence indicates that Mr. Bradley was available for work, as well as actively and earnestly searching for work during the majority of the benefit week that ended July 14, 2007. Accordingly, Mr. Bradley would be eligible for benefits for that week, provided he was otherwise eligible. The claimant's ability to work and availability for work effective July 15, 2007, has been resolved in favor of the claimant by the August 1, 2007, reference 04, decision and the administrative law judge need not further address that matter here.

**DECISION:**

The Agency representative's July 27, 2007, reference 02, decision is modified in favor of the claimant as follows. During the benefit week of July 1-7, 2007, the claimant was physically able to work, but did not make himself available for work or engage in an active and earnest search for work. Accordingly, the claimant is not eligible for benefits for the benefit week that ended July 7, 2007. During the benefit week of July 8-14, 2007, the claimant was able to work and, for the majority of the week, was available for work and actively and earnestly searching for work. Accordingly, the claimant is eligible for benefits for the benefit week ending July 14, 2007, provided he is otherwise eligible. The claimant's ability to work and availability for work effective July 15, 2007, has been resolved in favor of the claimant by the August 1, 2007, reference 04, decision and the administrative law judge need not further address that matter here.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw