

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN L WIRTZ
Claimant

APPEAL NO. 10A-UI-08654-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 05/02/10
Claimant: Appellant (2)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Calvin Wirtz, filed an appeal from a decision dated June 8, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 4, 2010. The claimant participated on his own behalf and with Jim Carr and Joe Casazza. The employer, UPS, participated by Feeder Manager Sharon Leonard.

ISSUE:

The issue is whether the claimant is able and available and eligible for unemployment benefits.

FINDINGS OF FACT:

Calvin Wirtz began employment with UPS on January 2, 2000, as an on-call driver. He continues in that same status as of the date of the hearing. As on in-call driver he guaranteed 40 hours of work per week only when there are routes available. The availability of routes is dependent on how many of the regular route drivers will not be working and would need a substitute. If there are no regular route drivers who would be gone, there is no work for the on-call drivers.

Mr. Wirtz filed a claim for unemployment benefits with an effective date of May 2, 2010, stating he was laid off. There was no work for him because none of the regular route drivers was gone and no substitute drivers were needed.

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".

The claimant was available to accept work from the employer as an on-call driver if there had been any routes for him to accept. The regular route drivers were not taking vacation or sick leave and no routes were put out to bid. Mr. Wirtz was still available to accept work had it been offered.

DECISION:

The representative's decision of June 8, 2010, reference 01, is reversed. Calvin Wirtz is eligible for benefits, provided he is otherwise qualified.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css