

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTOPHER J DOYLE**  
Claimant

**CRST VAN EXPEDITED INC**  
Employer

**APPEAL 18A-UI-06537-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/20/18**  
**Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 11, 2018, (reference 01) unemployment insurance decision that denied benefits based upon claimant's ability and/or availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2018. Claimant participated. Employer participated through human resource specialist Stephanie Winters.

**ISSUES:**

Is the claimant able to work and available for work effective May 20, 2018?  
Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 12, 2015. Claimant last worked as a full-time over the road driver.

Claimant has a back condition that is not work related. Claimant went on medical leave on October 5, 2017. Claimant's leave technically expired on December 27, 2017, but employer did not discharge him from employment even though he had not been released to return to work. On February 25, 2018, claimant was released to return to work with no restrictions. Claimant is required to pass a DOT physical examination in order to work as an over the road driver. In March 2018, claimant underwent a physical, but did not pass because of instability when walking.

On May 22, 2018, claimant let his driver manager know that he was resigning his position because he did not know how long it would take him to pass the DOT physical. No initial decision has been issued by the Iowa Workforce Development Benefits Bureau on whether this separation from employment disqualifies claimant from receiving unemployment insurance benefits.

Claimant has work experience as a financial advisor and has a Master's degree. Claimant is able to work in an office environment or in retail positions that do not require him to stand for a long period of time.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not on a leave of absence and is able to work and available for work effective May 20, 2018.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2)(1), (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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In this case, claimant resigned effective May 22, 2018, therefore he is not on an approved leave of absence.

Claimant was released to return to work with no restrictions in February 2018, but was unable to return to work as he was unable to pass his DOT physical in March 2018.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Claimant is not required to establish he is able to return to his former employment in order to be able to and available for work. Here, claimant has established he is able to and available to perform work in an office and is qualified to do so.

**DECISION:**

The June 11, 2018, (reference 01) unemployment insurance decision is reversed. The claimant is not on an approved leave of absence and is able to work and available for work effective May 20, 2018. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The issue of whether claimant's separation from employment on May 22, 2018, disqualifies him from receiving unemployment insurance benefits is remanded to the Iowa Workforce Development Benefits Bureau for an initial investigation and determination.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

cal/scn