

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAY PATESEL

Claimant

APPEAL NO: 14A-UI-09225-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAR/T TRUCKING INC

Employer

OC: 08/10/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 14, 2014, reference 02, decision that denied benefits for the three weeks ending August 30, 2014. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2014. The claimant participated in the hearing. Arleatte Bartelson, Signer participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Bar/T Trucking from April 27, 2012 through July 17, 2014. The employer was closing its business August 31, 2014, and was in the slow part of its season. The claimant was diagnosed with cancer and because the employer only had two or three runs for employees the following week, he and the employer agreed he would leave before the closing date of the business to seek treatment for his cancer because he could not find health care facilities that would treat him while he was on the road as opposed to receiving treatment at the same facility throughout his illness. Consequently, the claimant's last day worked was July 17, 2014.

The claimant is undergoing radiation and chemotherapy treatments. He goes to radiation treatments five days per week but the treatment only lasts 30 minutes per day. He will be done with his radiation treatments October 1, 2014. His chemotherapy treatment is administered in a pill.

The claimant is not experiencing ill effects from either of his treatments and his physicians have told him he is able to work and the claimant is actively seeking employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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 is not suffering side effects from his cancer treatments that would prevent him from working. He is not able to work as an over-the-road truck at this time because he has to be near his treatment facility but his doctors have told him he could work and the claimant is actively seeking work. Consequently, the claimant is able and available for work. Accordingly, benefits for the three weeks ending August 30, 2014, are allowed.

DECISION:

The September 14, 2014, reference 02, decision is reversed. The claimant is able to work and available for work effective August 10, 2014. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs