

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE M EXLINE

Claimant

APPEAL NO. 13A-UI-01227-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHNEIDER NATIONAL CARRIERS INC

Employer

OC: 12/23/12

Claimant: Respondent (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2013, reference 01, decision that allowed benefits beginning December 23, 2012 based on an agency conclusion that the claimant was available for work but temporarily laid off. After due notice was issued, a hearing was held on March 4, 2013. Claimant Lonnie Exline participated. Troy Greene, Driver Manager and Business Lead Manager, represented the employer.

ISSUES:

Whether Mr. Exline met the work availability requirement during the week of December 23-29, 2012.

Whether Mr. Exline was temporarily laid off during the week of December 23- 29, 2012.

Whether the employer's account may be assessed for benefits paid to Mr. Exline for the benefit week that ended December 29, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lonnie Exline established a claim for benefits that was effective December 23, 2012 and received benefits for one week, the week that ended December 29, 2012. Mr. Exline received \$486.00 in benefits. Mr. Exline then discontinued his claim.

Mr. Exline is employed by Schneider National Carriers as a full-time dedicated route truck driver. Mr. Exline began his employment in 2010 and continues in the employment at this time. Throughout the employment, Mr. Exline has been assigned to the employer's Whirlpool Amana account. Mr. Exline's work duties have consisted exclusively of supporting production at a Whirlpool Amana production plant in Amana. Mr. Exline hauls parts to the Amana facility from 13 vendors within a 135-mile radius of the plant. Mr. Exline usually starts his work day at 9:00 a.m. and usually completes his workday between 8:00 and 9:30 p.m. Mr. Exline has been able to return home each evening and has been able to be at home on the weekends.

The Whirlpool Amana plant traditionally shuts down temporarily in connection with the Christmas and New Year's holidays.

On Thursday, December 20, 2012, the Whirlpool Amana plant shut down in response to blizzard weather. The plant remained closed on Friday, December 21. The plant operated with partial staffing on Saturday, December 22. The plant was then shut down on December 23, 24 and 25 in connection with the Christmas holiday. The plant operated with a skeleton crew on Wednesday, December 26. The plant was then closed Thursday, December 27 through Tuesday, January 1, 2013 in connection with the Christmas and New Year's holidays. The plant reopened on Tuesday, January 2, 2013.

Due to the December 20, 2012 blizzard shut down, Schneider National had a backlog of freight that needed to be delivered to the Whirlpool Amana plant. On Friday, December 21, a Schneider National notified Mr. Exline that there might be a need for him to deliver freight to the Whirlpool Amana plant on Wednesday, December 26. On December 21, Mr. Exline told the employer that he had made travel plans for the holiday, that he would be out-of-town, and that he would not be available to haul freight during the scheduled shutdown. Mr. Exline had plans to travel to Columbia, Missouri for the Christmas holiday. Mr. Exline did indeed travel to Missouri on December 25, Christmas day.

At 9:45 a.m. on December 26, 2012, dispatcher Amanda Harrison notified Mr. Exline by telephone that the employer had a load of freight for him to haul *from the Target distribution center in Cedar Falls*. Mr. Exline had never previously performed work on the Target account. The load needed to be collected around 4:00 p.m. Mr. Exline was in Columbia, Missouri at the time he received a telephone call. The distance from Columbia, Missouri to Amana is approximately 300 miles. The distance from Columbia, Missouri to Cedar Falls is approximately 316 miles. Mr. Exline told Ms. Harrison that he would accept the load, but that he was in Columbia, Missouri. When he mentioned where he was, Ms. Harrison said, "Oh, you're out of the area." Ms. Harrison then told Mr. Exline not to worry about the load.

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".

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's

employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

A claimant does not have to be available for a particular shift to demonstrate availability for work. See Iowa Admin. Code rule 871 – 24.22(2)(a). The test is whether the claimant is available for work on the same basis on which the claimant's wage credits were earned. Id.

Iowa Administrative Code rule 871 – 24.23(41) addresses temporarily unemployed, or temporarily laid off workers, and states that a claimant will be deemed not available for work, and not eligible for benefits, if:

The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

The weight of the evidence establishes that the employer only had work available to Mr. Exline on one day of the week for which Mr. Exline claimed and received unemployment insurance benefits. The weight of the evidence indicates that Mr. Exline offered to make himself available for work that day, but the employer moved on to another driver when Mr. Exline reminded the employer that he was out of state. The weight of the evidence indicates that the one day of work the employer had for Mr. Exline was not his usual work and was outside Mr. Exline's normal working hours. The weight of the evidence indicates that the Mr. Exline notified the

employer on December 21, 2012 that he was traveling out of state, but did so based on the fact that work was traditionally not available around the Christmas and New Year's holidays. For all these reasons, the administrative law judge concludes that Mr. Exline satisfied the work availability requirement for the week ending December 29, 2012 and is eligible for benefits for that week. The employer's account may be charged.

DECISION:

The Agency representative's January 25, 2013, reference 01, decision is affirmed. The claimant satisfied the work availability requirement for the week ending December 29, 2012 and is eligible for benefits for that week. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs