

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY D GAINEY
Claimant

APPEAL NO. 11A-UI-01144-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 09/05/10
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 20, 2011 (reference 03) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 2, 2011. Claimant participated. Employer participated through Sandy Matt. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant is able to and available for work effective September 5, 2010.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant had a stroke in early December 2009 and another in May 2010. He has been released to work from a cardiology standpoint but has not presented evidence of release to work from a neurologist. He agrees he is not able to drive his personal vehicle because of a concentration deficit and short-term memory issues. His short-term disability through CRST ran out on June 10, 2011. DOT regulations indicate he cannot drive commercially for at least a year from the stroke or heart condition. He is seeking non-driving jobs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective September 5, 2010.

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".

871 IAC 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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Benefits are withheld until such time as the claimant obtains a neurological medical release to return to some type of work of which he is capable of performing given any medical restrictions, even if he cannot return to truck driving.

DECISION:

The representative's decision dated January 20, 2011 (reference 03) is affirmed. The claimant is not able to work and available for work for the effective September 5, 2010. Benefits are withheld until such time as the claimant obtains a neurological medical release to return to some type of work of which he is capable of performing given any medical restrictions.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css