

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARE TCHOULOU

Claimant

APPEAL NO. 22A-UI-07803-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

J B HUNT TRANSPORT INC

Employer

OC: 02/27/22

Claimant: Appellant (4)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Employer Chargeability

Iowa Code § 96.1A(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 29, 2022, reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 9, 2022. Claimant participated personally and was represented by attorney Aaron Meyers. Employer failed to respond to the hearing notice and did not participate. Attorney for claimant stated he'd forwarded exhibits to the appeals bureau, but an extensive search found no exhibits.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Is claimant on an approved leave of absence?

FINDINGS OF FACT:

The claimant currently works for JB Hunt transport, a base period employer, full time as a truck driver – although he has been unable to work since December 27, 2021. Claimant was involved in an accident on that date while driving a work truck. The accident injured claimant's hip and his back.

Claimant remains injured to this date. Since late January, claimant's doctor sent multiple notes to employer saying claimant was unable to drive and unable to lift over 50 lbs. and not able to bend. Claimant stated these are the same restrictions he's had throughout his recovery and were still the same at claimant's most recent doctor's visit last week.

Claimant has not asked for work from employer until last week. A couple of months ago, employer called claimant and asked if he could return to work – assumedly as a truck driver. Claimant stated that he was not ready as he was still in pain. Claimant then said, “I’ll let you know when I am ready.” Claimant was not in further contact with employer until last week.

Claimant is primarily a French speaker. He states he is not fluent in English. Claimant further stated that employer has a repair shop in Cedar Rapids – approximately an hour and a half from where claimant resides in Davenport. Claimant stated that he is not a mechanic, but would be willing to help in any way.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is temporarily unemployed as of May 1, 2022.

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. 871-24.23(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.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

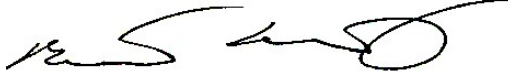
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. 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.

Because the claimant denied that he was able to work when employer called claimant and asked him if he could work, claimant is not able and available until the time he announced himself as able and available for work. This occurred sometime during the week of May 1, 2022. Prior to that time, the most recent contact employer had with claimant was during the month of March. At the time claimant stated he was in too much pain to return to work. Claimant did not indicate he was willing to work in a position other than driving when employer contacted claimant in March. Benefits are denied prior to May 1, 2022 as claimant was not able and available to work. As of that date, claimant indicated that he was able to return to work in some capacity. As claimant is willing to return to work – in some position that fits within claimant's restrictions – employer now has the option of finding work within the restrictions or having claimant remain on unemployment.

DECISION:

The March 29, 2022, reference 03, decision is modified in favor of claimant. The claimant is deemed able and available to work as of May 1, 2022, and eligible to receive benefits after that date.



Blair A. Bennett
Administrative Law Judge

May 27, 2022
Decision Dated and Mailed

bab/kmj