

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN E MATTHEWS
Claimant

APPEAL NO: 10A-UI-03094-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CPC PARTS DELIVERY LLC
Employer

**OC: 01/03/10
Claimant: Respondent (1)**

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed a representative's February 15, 2010 decision (reference 01) that concluded the claimant was eligible to receive benefits as of January 3, 2010 because she was on a short-term layoff and was available to work. A telephone hearing was held on March 31, 2010. The claimant participated in the hearing. John Fitzgerald, the regional manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of January 3, 2010, is the claimant eligible to receive benefits when the employer did not have work as a team driver for her, but did have work as a solo driver for her?

FINDINGS OF FACT:

The claimant started working as a team driver for the employer on September 3, 2008. The employer hired the claimant and her husband worked as over-the-road team drivers. In late December 2009 the employer had to rebid routes and did not have a route for the claimant and her husband to do as a team. The employer offered the claimant and her husband continued work as solo drivers. However, if the claimant agreed to drive solo, she could be paired up with another driver, not her husband, to work as a team. The claimant did not want to drive with another male. The claimant declined to work as a solo driver.

The claimant returned to work for the employer as a team driver with her husband on January 31, 2010. The claimant was able to and available to work as a team driver with her husband as soon as the employer had work for them as team drivers.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. In this case, the employer had work for the claimant to do in January, but it was not under the same conditions that she had been hired. Instead of working as a team

driver with her husband, the employer only had work for her as a solo driver. Also, the employer told the claimant that if she agreed to work as a solo driver, there was the possibility she could be assigned to work with another, but not her husband. Under these facts, the claimant could have quit and she would have had good cause to quit because the employer substantially changed her employment. 871 IAC 24.26(1). The claimant did not quit. Instead, she decided to wait until the employer could again assign the claimant and her husband to a truck as team drivers. The employer effectively placed the claimant on a short-term layoff for three weeks.

The evidence indicates the claimant was able to and available for work during the weeks she was not assigned to work as a team driver with her husband. For unemployment insurance purposes, the claimant was able to and available for work as of January 3, 2010. Therefore, the claimant is eligible to receive benefits.

DECISION:

The representative's February 15, 2010 decision (reference 01) is affirmed. The claimant is eligible to receive benefits as of January 3, 2010, provided she meets all other eligibility requirements. During the time the employer did not have work for her as a team driver with her husband, she was able to and available for work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css