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

MARK D WILLIAMS
Claimant

APPEAL NO: 11A-UI-09556-DT

ADMINISTRATIVE LAW JUDGE
DECISION

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 03/13/11
Claimant: Respondent (1/R)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's June 30, 2011 decision (reference 03) that concluded Mark D. Williams, Sr. (claimant) was qualified to receive unemployment insurance benefits as being medically able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2011. The claimant participated in the hearing. Lea Peters appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on May 6, 2009. He worked full time as an over-the-road truck driver. His last day of actual work was February 15, 2011.

Another representative's decision was also issued on June 30, 2011 (reference 02). That decision concluded that the claimant was not eligible to receive unemployment insurance benefits because the representative concluded that the claimant had:

> . . . voluntarily quit work on 04/21/11, because of non-work-related illness or injury. Your quitting was not caused by your employer.

> To be eligible for benefits, you must have:

>   1.   Left work on the advice of a licensed practicing physician;
>   2.   Notified your employer immediately;
>   3.   Attempted to return to work after recovery was certified by a physician and was told by your employer that work was not available to you (or)

1. Earn wages for insured work equal to ten (10) times your weekly unemployment benefit amount after your separation date; and
2. Meet all the other eligibility requirements.

It does not appear that the claimant appealed this decision concluding that he was not eligible to receive unemployment insurance benefits due to the circumstances of the separation. It does not appear that a Claims representative has made any determination as to whether the claimant has fully satisfied all aspects of either set of the criteria set out in the June 30, 2011 (reference 03) decision to determine whether the circumstances of the separation no longer disqualifies the claimant.

The claimant's doctor's notes establish that as of March 8, 2011 the claimant was not medically able to work; the notes also establish that as of June 7, 2011 the claimant was medically able to work without restriction. The employer specifically asserts that the claimant has failed to "attempt[] to return to work after recovery was certified by a physician . . ."

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be qualified for unemployment insurance benefits, the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. "A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required." 871 IAC 24.22(1)a. The evidence establishes that as of June 7, 2011 the claimant was medically able to work. As of that week, he is able and available for work as needed to be <u>qualified</u> to receive unemployment insurance benefits. Offering to return to work is not part of the criteria for determining whether a claimant is "able and available" for work; it is an element of becoming eligible after a determination has been made that a claimant has quit due to a non-work-related illness or injury.

As this decision only considers whether the claimant is <u>qualified</u> to receive unemployment insurance benefits by being "able and available for work, this decision does not finally resolve the question as to whether the claimant is <u>eligible</u> to receive unemployment insurance benefits. As the June 30, 2011 (reference 03) indicates, because the claimant was now able and available for work, he would be eligible to receive unemployment insurance benefits "as long as you meet all the other eligibility requirements." The decision concluding that the separation was disqualifying as to the claimant until or unless the specific criteria were satisfied does not appear to have been appealed, so at this time the administrative law judge needs to treat that decision as being final. If the claimant has good cause for not appealing that decision previously, and now wishes to appeal the separation decision, he should do so immediately, with an explanation as to why he did not appeal sooner.

Regardless of whether the claimant files an appeal of the separation decision, an issue as to whether the claimant has satisfied the criteria of the separation decision arose during the hearing in this case. That issue was not included in the notice of hearing for this case, and the matter will be remanded for an investigation and determination on the issue of whether those criteria have been satisfied so that the separation decision should be modified. 871 IAC 26.14(5).

DECISION:

The representative's June 30, 2011 decision (reference 03) is affirmed. As of the week beginning June 5, 2011, the claimant is able to work and available for work and is qualified to receive unemployment insurance benefits, if he is otherwise eligible. However, unless the terms of the June 30, 2011 (reference 02) decision are reversed or have been satisfied, the claimant is not currently "otherwise eligible." The matter is remanded to the Claims Section for review of the issue as to the satisfaction of the criteria in the separation decision.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs