

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARTESE P SMITH
Claimant

APPEAL NO: 18A-UI-06715-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 05/13/18
Claimant: Respondent (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's June 13, 2018, decision (reference 03) that concluded Martese Smith (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 5, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Lea Peters, Human Resources Generalist.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from July 24, 2013, to October 21, 2018. He was a full-time over the road driver. The claimant suffered a personal medical issue on or about October 22, 2017. The claimant requested and was granted Family Medical Leave (FMLA) from November 7, 2017, to January 26, 2018. After his FMLA expired, the claimant was granted extended leave through May 1, 2018. The claimant had exhausted all his leave as of May 1, 2018, and he was unable to return to work.

The employer left voice mail messages for the claimant on June 15, June 18, and June 20, 2018, hoping to offer him work. The claimant did not respond the employer's messages.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is unable to perform work due to a medical condition, he is considered to be unavailable for work. The claimant did not participate in the hearing and, therefore, provided no evidence of his ability to work. The claimant did not meet his burden of proof. Benefits are denied.

DECISION:

The representative's June 13, 2018, decision (reference 03) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs