

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LLOYD R RUSSELL

Claimant

APPEAL 14A-UI-11853-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROFESSIONAL TRANSPORTATION INC

Employer

OC: 10/19/14

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-23.16 – Availability Disqualifications – Hours Limitation

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 13, 2014 (reference 01) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on December 29, 2014. Claimant participated. Employer participated through branch manager Jonathan Buchan.

ISSUE:

Is the claimant partially unemployed and available for work effective October 19, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a driver for transporting railroad crews. Drivers are considered full time if they are listed on the board five days per week as claimant is. He is paid \$10.03 per hour to wait and 20 cents per mile to drive. He stepped down as branch manager in mid-June 2014 and Buchan took over. The company switched to a 12-hour on-call shift but there was no change in allowance of 12-hour driving shifts or 15-hour combined driving and rest shifts according to DOT rules. In order to maintain 18 drivers to cover 24-hour shifts, Buchan hired drivers for that area beyond the three that were already employed. He became sick and had to stay home for part of the week ending December 27, 2014. He also declined an assignment the week before because of timing. Claimant generally chooses shifts that require him to work into the day so he does not have adequate rest to be available for assignments at the beginning of the next shift. He told Buchan he picks and chooses available assignments to get longer trips. Full-time work is available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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".

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code § 96.19-38 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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The limitation of hours was triggered by claimant leaving the branch manager position, increasing staff to levels necessary to cover all shifts, and claimant's inability or unwillingness to work the available assignments.

DECISION:

The November 13, 2014 (reference 01) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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