

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY E CLEMONS**  
Claimant

**APPEAL NO. 10A-UI-03773-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURRAN TRANSFER INC  
STRAIGHT SHOT EXPRESS**  
Employer

**OC: 01/31/10  
Claimant: Respondent (4R)**

Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Curran Transfer (employer) appealed a representative's March 3, 2010 decision (reference 01) that concluded Rodney Clemons (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 held on April 26, 2010. The claimant participated personally. The employer participated by David Ames, Operations Manager.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable 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 was hired in August 2008, as a driver working when loads were available. He worked 40 hours per week when work was available. Sometimes the claimant would not get the employer's telephone call for available work. Sometimes the claimant would not have a ride to work. The claimant worked when he could.

In January 2010, a large customer of the employer went to another company. The claimant did not have as many hours due to fewer loads. Also from February 21 through March 5, 2010, the claimant did not realize the employer tried to call him in to work. In addition he did not have transportation to get to work on two occasions.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is able and available for work except for the two-week period ending March 6, 2010.

871 IAC 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.

When an employee does not go into work when work is available, he is not able and available for work. The employer had work but the claimant did not check to see if work was available or did not have transportation. He is considered to be unavailable for work for the two week period ending March 6, 2010. The claimant is disqualified from receiving unemployment insurance benefits for the two-week period ending March 6, 2010, due to his unavailability for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's March 3, 2010 decision (reference 01) is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits because he was not available for work for the two-week period ending March 6, 2010. The issue of the overpayment is remanded for determination.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css