

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACK W HENRY**  
Claimant

**APPEAL NO. 16A-UI-10289-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROFESSIONAL TRANSPORT**  
Employer

**OC: 06/05/16**  
**Claimant: Appellant (4)**

Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Jack Henry filed a timely appeal from the September 14, 2016, reference 02, decision that denied benefits for the four-week period of August 14, 2016 through September 10, 2016, based on an agency conclusion that he was not able to work during that period. After due notice was issued, a hearing was held on October 5, 2016. Mr. Henry participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-10290-JTT. Exhibits A and B and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO) and the claimant's weekly unemployment insurance claims (KCCO).

**ISSUES:**

Whether Mr. Henry was able to work and available for work during the four-week period of August 14, 2016 through September 10, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jack Henry is employed by Professional Transport as full-time van driver. Professional Transport provides transportation services to railroad employees. Mr. Henry's duties involve transporting railroad crews to the train location. Mr. Henry is on-call 24 hours per day, seven days a week and goes to work when the employer dispatches him to transport a railroad crew. 90 percent of the time, Mr. Henry transports crews from Eagle Grove. At other times, Mr. Henry transports crews from Mason City or Des Moines.

Mr. Henry established an original claim for benefits that was effective June 5, 2016, so that he could obtain unemployment insurance benefits for those weeks wherein the employer does not provide him with full-time work. Workforce Development set Mr. Henry's weekly benefit amount at \$428.00. Through the benefit week that ended August 20, 2016, Mr. Henry consistently made weekly claims, but only received benefits for the three weeks that ended June 11, July 9

and August 13, 2016. Mr. Henry reported wages for each of those three weeks and received a reduced unemployment insurance benefit amount for each of those weeks.

During the week of August 14-20, Mr. Henry was able to work, available for full-time work, but the employer did not provide him with any work.

Mr. Henry did not file weekly claims for the weeks that ended August 27, September 3 or September 10, 2016. During that time, Mr. Henry was dealing with a health issue that resulted in him being hospitalized and unable to work through September 8, 2016.

## **REASONING AND CONCLUSIONS OF LAW:**

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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.

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 Code Section 96.19(38)(c).

The evidence establishes that Mr. Henry was able to work and available for full-time work during the benefit week that ended August 20, 2016, but was temporarily unemployed during that week. Mr. Henry is eligible for benefits for the week that ended August 20, 2016, provided he meets all other eligibility requirements. The employer's account may be charged for those benefits.

Because Mr. Henry did not make weekly claims for the weeks that ended August 27, September 3 and September 10, 2016, he would not be eligible for benefits for those weeks. See Iowa Administrative Code section 871 IAC 24.2(1) (g) (No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department). However, the evidence establishes that Mr. Henry did not meet the work ability or availability requirements during those weeks, due to a significant health issue.

**DECISION:**

The September 14, 2016, reference 02, is modified as follows. The claimant was able to work and available for full-time work during the benefit week that ended August 20, 2016, but was temporarily unemployed during that week. The claimant is eligible for benefits for the week that ended August 20, 2016, provided he meets all other eligibility requirements. The employer's account may be charged for those benefits. The claimant did not meet the able and available requirements during the weeks that ended August 27, September 3, and September 10, 2016. The claimant is not eligible for benefits for those three weeks.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs