

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN MEHLISCH
Claimant

APPEAL NO. 09A-UI-15645-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YRC INC
Employer

OC: 04/19/09
Claimant: Respondent (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

YRC, Inc. filed an appeal from a representative's decision dated October 6, 2009, reference 01, which held that Brian Mehlisch satisfied the availability requirements of the law as of September 6, 2009 and denied the employer relief from benefit charges. After due notice was issued, a hearing was held by telephone on November 19, 2009. The employer participated by Mark Matney, Dispatcher, and Tobin Cady, Service Center Manager. Mr. Mehlisch did not participate in the hearing.

ISSUE:

At issue in this matter is whether Mr. Mehlisch satisfied the availability requirements of the law as of September 6, 2009.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mehlisch has been employed by YRC, Inc. since June 7, 1999. He works full time as a driver and dock worker. He was laid off due to lack of work on September 6, 2009. The employer has not called him about work since the layoff.

Mr. Mehlisch initially filed a claim for job insurance benefits effective April 19, 2009 when the employer laid him off. There were several weeks thereafter when the employer called to offer casual work but he declined. The employer believes there may have been 20 hours of work available to him during some weeks before he was recalled to full-time work on August 9, 2009.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be available for work. Iowa Code section 96.4(3). An individual who is on a temporary layoff is exempt from the provisions of section 96.4(3) but must remain available to the employer that laid him off. See 871 IAC 24.23(41). The representative's decision from which the employer appealed allowed benefits to Mr. Mehlisch as of September 6, 2009. The employer acknowledged that he was laid off that week. The employer further acknowledged that he has not been offered work since that layoff.

Since the employer did not offer him work during the temporary layoff that began September 6, 2009, there is no basis for imposing a disqualification as of that date.

The employer's evidence focused primarily on Mr. Mehlisch's refusal of work following the April 12, 2009 layoff. Although an individual must remain available to his regular employer, he is only disqualified from benefits if he fails to work the major portion of the workweek for his regular employer. 871 IAC 24.23(29). The employer could only speculate as to the amount of work that may have been available to Mr. Mehlisch during weeks following April 12. Without knowing specifically what was offered to him, the administrative law judge cannot conclude that he failed to work the major portion of any workweek.

After considering all of the evidence, the administrative law judge concludes that there is no basis to conclude that Mr. Mehlisch has not been available for work at all times since filing his claim effective April 19, 2009. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 6, 2009, reference 01, is hereby affirmed. Mr. Mehlisch satisfied the availability requirements of the law at all times since filing his claim effective April 19, 2009. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs