

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN C BRYANT
Claimant

APPEAL NO: 11A-UI-05935-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST FLATBED REGIONAL INC
Employer

OC: 12/26/10
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Calvin C. Bryant (claimant) appealed a representative's May 3, 2011 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in connection with CRST Flatbed Regional, Inc. / CRST Van Expedited, Inc. (employer) due to a question as to his availability for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 6, 2011. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf. This appeal was consolidated for hearing with one related appeal, 11A-UI-05936-DT. Official notice was taken of two prior administrative law judge's decisions regarding the separation from employment between the parties, 11A-UI-03472-NT and 11A-UI-02828-DT. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on May 28, 2009. He worked full time as an over-the-road tractor trailer driver. As determined in the administrative law judge's decisions issued on March 28, 2011 which have become final, the separation from employment occurred on January 17, 2011, and was effectively a layoff for lack of work. As further indicated in those decisions, on or about January 17, 2011 the claimant provided medical documentation indicating that he was released by his doctor to return to work. He had established an unemployment insurance benefit year effective December 26, 2010. He had last worked for the employer on or about December 14, at which time he began a medical leave of absence, which ended on January 17 upon the provision of his medical releases.

The prior administrative law judge's had additionally noted that there was a question as to the claimant's availability for work after the separation as the claimant subsequently became

engaged in working for the employer not as an employee but as an independent contractor/owner operator. As a result of the question as to the claimant's availability for work, the matter was remanded the Claims Section, resulting in the decisions issued on May 3, which concluded that the claimant was not able and available for work and not eligible for benefits as of December 26, 2010.

The claimant officially entered into the independent contractor/owner operator relationship with his prior employer as of March 4, but was not able to pick up his truck from the employer's repair shop and start driving until March 12. Once he began working, while he did have some loads each week, rather than being able to work and drive the 70 hours per week allowed by law, the claimant was only being given loads that took him between 20 and 30 hours per week. He spent much down time waiting in truck stops. During his down time the claimant was pursuing a work search by making web-based job applications on his computer, making four or five job applications per week. If he had been offered employment through any of those contacts, he was prepared to be able to promptly start work with that prospective employer.

Ultimately because he was not able to generate enough income in the independent contractor/owner-operator relationship due to the lack of hours and miles, the claimant turned the truck back into the employer on May 23; he has continued his work search for other employment since that time.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not "able and available" for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10). The claimant's unemployment from December 28 until January 17 was due to his being on a medical leave of absence. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). The claimant was not eligible to receive unemployment insurance benefits through the benefit week ending January 15, 2011 because he was not medically able and available for work for that period.

The more critical question deals with the period after January 17, and even more specifically for the period after March 4 at the point at which the claimant began his independent contractor/owner-operator relationship with his former employer. A claimant who devotes sufficient time and effort to self-employment so as to remove himself from the labor market is not "able and available" for work and not eligible for unemployment insurance benefits. 871 IAC 24.23(7), (20), (23). The claimant did engage in some self-employment between March 4 and May 23, but not to the extent so as to remove himself from the labor market or to make himself unavailable for work elsewhere. He did continue his work search and made himself available to other employers. As of January 17, 2011 the claimant was adequately able and available for work as to be eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 3, 2011 decision (reference 03) is modified in favor of the claimant. The claimant is not able to work and available for work from December 26, 2010 through January 15, 2011, and was not eligible to receive benefits for that period. After January 17,

2011 he is able and available for work, and as of the benefit period beginning January 16, 2011 is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css