

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNIE D STEPHENS
Claimant

APPEAL NO. 15A-UI-09639-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURRAN TRANSFER INC
Employer

OC: 07/26/15
Claimant: Respondent (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 19, 2015, reference 02, decision that allowed benefits to the claimant effective July 26, 2015, provided the claimant was otherwise eligible, based on an Agency conclusion that the claimant was able to work and available for work within the meaning of the law. After due notice was issued, a hearing was held on September 14, 2015. Claimant Ronnie Stephens participate. Keith Fuller represented the employer and presented additional testimony through Sandra Sander. The administrative law judge took official notice of the follow Agency administrative records: DBRO, KCCO, and WAGE-B.

ISSUE:

Whether the claimant has been able to work and available for work since the claimant established the claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronnie Stephens established a claim for benefits that was effective July 26, 2015 and has continued his claim since that time. Mr. Stephens has received unemployment insurance benefits for each week of the claim.

Mr. Stephen's most recent employer was Curran Transfer, Inc., where Mr. Stephens worked as a full-time truck driver. Mr. Stephens most recently performed work for the employer on August 12, 2014. On that day, Mr. Stephens was injured in the course of the employment when the truck he was operating left the roadway and rolled. Mr. Stephens suffered multiple injuries, including substantial injury to right leg. Mr. Stephens underwent surgery on his right left in January 2015. Mr. Stephens participated in physical therapy. Mr. Stephen's recovery suffered a setback when his leg wound became infected.

In April 2015, Mr. Stephens was released to return to work without restrictions. When Mr. Stephens notified the employer that he had been released to return to work, the employer provided him with various rationalizations for not returning him to his work duties. Mr. Stephens

obtained an updated medical certification, but the employer continued to stall his return to the employment. The employer told Mr. Stephens that the employer was “working on a package” for Mr. Stephens. After more than a month of trying to return to work, but being rebuffed by the employer, Mr. Stephens concluded the employer was not going to allow him to return.

Mr. Stephens delayed filing his claim for unemployment insurance benefits. Since the claim went into effect, Mr. Stephens has at all times been released to return to work and medically able to work. Since the claim went into effect, Mr. Stephens has consistently made at least two employer contacts per week as part of his search for new employment.

Curran Transfer, Inc. is the sole base period employer for purposes of the claim that was effective July 26, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

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.

(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.

The weight of the evidence establishes that Mr. Stephens has been able to work and available for work since he established his claim for benefits. Mr. Stephens was released to return to work without restrictions months before he filed his claim for benefits. Despite Curran Transfer's refusal to return him to the employment, Mr. Stephens has otherwise engaged in an active and earnest search for new employment since he established his claim. Effective July 26, 2015, Mr. Stephens is eligible for benefits, provided he meets all other eligibility requirements.

The evidence establishes that a separation from the employment at Curran Transfer, Inc., has occurred. The separation, along with its impact on Mr. Stephen's eligibility for benefits and the employer's liability for benefits has not yet been adjudicated. Accordingly, this matter will be remanded to the Workforce Development Benefits Bureau so that the separation may be adjudicated.

DECISION:

The August 19, 2015, reference 02, decision is affirmed. The claimant has been able and available for work, and has been engaged in an active and earnest search for new employment, since establishing his claim for benefits. Accordingly, the claimant is eligible for benefits, provided he meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for adjudication of the separation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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