

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL LOMACK
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL 14A-UI-13066-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/02/14
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated December 9, 2014, (reference 04) that held claimant was able to and available for work. After due notice, a hearing was scheduled for and held on January 12, 2015. Employer participated by Kim Bateman, Human Resources Specialist. Claimant failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant is able and available for work, and was he overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant has worked for employer since August 21, 2014, and is currently employed there full-time as an over-the-road truck driver. Claimant's original and current contract of hire has him working for 20 days in a row, and then 10 days off each month. Claimant is not on leave during his 10 days off each month.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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(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.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Since claimant limited the number of hours he was available to or willing to work, was off work due to full-time employment, he has not established his ability to or availability for work. Accordingly, benefits are denied.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$212.00, since filing a claim, for the one week ending December 6, 2014. The administrative record also establishes that the employer did participate in the fact-finding interview or made a first-hand witness available for rebuttal.

DECISION:

The December 9, 2014, (reference 04) decision is reversed. The claimant is not able to work and available for work effective November 21, 2014. Benefits are denied. Claimant is overpaid benefits in the amount of \$212.00.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs