

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES S MORRIS

Claimant

APPEAL NO. 13A-UI-11402-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 09/08/13

Claimant: Respondent (1-R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 1, 2013, reference 02, decision that allowed benefits based on a conclusion that the claimant was able and available for work. After due notice was issued, a hearing was held on November 4, 2013. Claimant James Morris participated. Dave Dalmasso represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-11401-JTT. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and of the claimant's weekly report to the agency via the agency's Internet website.

ISSUE:

Whether Mr. Morris has been able to work and available for work since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Morris was employed by Heartland Express Inc. of Iowa as a full-time over-the-road truck driver for more than a decade and last performed work for the employer on May 10, 2013. Mr. Morris has at all relevant times resided in Rhinebeck, New York, a large metropolitan area. Mr. Morris was assigned the employer's terminal in Carlisle, Pennsylvania. Joe Jenkins, Terminal Manager, was Mr. Morris' supervisor. Rhinebeck is about a five-hour drive from Carlisle.

After Mr. Morris performed work for the employer on May 10, 2013, he commenced a personal leave of absence due to a diagnosis for chronic anemia and fatigue. Mr. Morris' doctor took him off work. The doctor advised Mr. Morris that he could perform work that did not involve operating a commercial motor vehicle or lifting more than 50 pounds. Mr. Morris made appropriate contact with his immediate supervisor regarding his need to be off work.

On June 21, 2013, the employer's human resources department became involved and deemed Mr. Morris to be on a leave under the Family and Medical Leave Act (FMLA). Mr. Morris' doctor provided appropriate documentation to support Mr. Morris' continued need to be off work.

Mr. Morris had used FMLA leave earlier in the year. The employer decided that the new period of leave would expire on July 30, 2013, when Mr. Morris exhausted FMLA leave rights.

At the end of the FMLA leave period, the employer decided to extend the leave another 15 days, to August 23, 2013. When Mr. Morris had still not been released to return to his truck driving duties, the employer contacted Mr. Morris on September 3, 2013 to inquire whether Mr. Morris was able to return to his duties. Mr. Morris told the employer that his doctor had not released him to return to his truck driving duties. Mr. Morris had most recently provided the employer with medical documentation dated August 26, 2013, which indicated that he would need to continue to be off work until further notice. The employer told Mr. Morris that he would be deemed to have separated from the employment and that the employer would mail him a letter regarding his COBRA rights.

At no time did Mr. Morris express an intent to sever the employment. Instead, Mr. Morris hoped to return to the employment as soon as his doctor cleared him to do that.

Mr. Morris established a claim for unemployment insurance benefits that was effective September 8, 2013. Mr. Morris received \$2,856.00 in benefits for the period of September 8, 2013. Mr. Morris has never returned to the employer to offer his services. Prior to establishing his claim for benefits, Mr. Morris commenced his search for new employment that would not involve driving a commercial truck. Since Mr. Morris filed the claim he has made at least two weekly job contacts. Mr. Morris has never been released to return to his trucking driving duties and has never returned to the employer to offer his services upon being released to return to the work.

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 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".

871 IAC 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 evidence indicates that at the time Mr. Morris established his claim for benefits, he was released to perform work other than truck driving or work that required lifting greater than 50 pounds. Since Mr. Morris established the claim for benefits he had made at least two weekly job contacts. Mr. Morris thereby demonstrated his ability to work and his availability to work. Because the employment with Heartland Express ended on September 3, 2013, Mr. Morris was not obligated to demonstrate availability for work with that employer in order to demonstrate work availability for unemployment insurance purposes. Mr. Morris has been eligible for benefits since he filed his claim and continued to be eligible for benefits as of the November 4, 2013 appeal hearing, provided he meets all other eligibility requirements.

This matter will be remanded to the Claims Division to review of Mr. Morris' work ability and availability going forward. That determination should include review of appropriate medical documentation.

DECISION:

The agency representative's October 1, 2013, reference 02, decision is affirmed. The claimant has been able and available since he filed his claim for benefits and continues to meet those requirements at this time. This matter is remanded to the Claims Division to review of the claimant's work ability and availability going forward. That determination should include review of appropriate medical documentation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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