

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNY CLICK

Claimant

APPEAL NO: 19A-UI-04156-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 04/14/19

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 14, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 14, 2019. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time over-the-road truck driver for CRST Van Expedited on February 2, 2018, and is still employed there. He had his DOT physical in January 2019 and passed it but was told he needed to participate in a sleep study. He scheduled that test immediately and was then told he needed to use a c-pap machine for 30 days and provide the results to the DOT physician. The claimant was allowed 90 days to complete the sleep study and use the c-pap machine for 30 days. The employer told drivers in January 2019 it was installing inverters in every truck so drivers would be able to use their c-pap machines on the road in their trucks. The claimant purchased a c-pap machine for \$2,000.00 within the first month of his DOT physical. He then went to his driver manager so he could get back in his truck and run his c-pap off the inverter but when he went to have the inverter installed by maintenance he was told the inverters had not come in yet. The claimant worked until the last hour of the 90 days he was allowed to complete the sleep study and 30 days on the c-pap but the inverters were still not in so his last day of work was April 11, 2019. The claimant then started the 30 days on the c-pap machine at home the evening of April 11, 2019 and completed that test period May 12, 2019. He has not yet been returned to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant presented himself for the sleep study and was then required to complete a thirty day period whereby he used the c-pap machine every night. The employer told employees it was installing inverters in all the trucks so drivers could use their c-pap machines in their trucks and the claimant relied on that information in believing he would be able to continue driving and using the c-pap machine in his truck when he slept at night. However, the inverters were never installed in the trucks before the claimant's 90 day deadline to complete the sleep study and 30 day c-pap trial ran. Had the employer followed through with its promise of putting inverters in all trucks, the claimant would not have missed any work. The fact the claimant had to leave his job after the 90 day limit was reached, was not attributable to any action by the claimant but was attributable to the employer's failure to install the inverters in a timely manner. It promised an accommodation but failed to fulfill that promise to drivers in general and the claimant in particular.

Accordingly, the claimant was able and available for work effective April 14, 2019. Therefore, benefits must be allowed.

DECISION:

The May 14, 2019, reference 01, decision is reversed. The claimant is able to work and available for work effective April 14, 2019. Benefits are allowed beginning the week ending April 20, 2019.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn