

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD PRIEBE**

Claimant

**APPEAL NO: 15A-UI-07483-LDT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR FALLS COMM SCH DIST**

Employer

**OC: 05/31/15**

**Claimant: Appellant (4/R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Donald Priebe (claimant) appealed a representative's June 26, 2015 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2015. The claimant participated in the hearing and presented testimony from one other witness, Randy Miller. Adrian Talbot appeared on behalf of Cedar Falls Community School District (employer). 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 April 1, 1999. He worked part time as an on-call substitute bus driver. His last day of work was in October 2014. He had a heart attack in October which resulted in a period of time during which under DOT provisions relating to the claimant's CDL he could not drive a bus, and his employment became inactive.

On March 23, 2015 the claimant's cardiologist issued the claimant a statement indicating that he could resume driving a commercial vehicle. The claimant presented this to the employer, who passed it on to its occupational health doctor, who then indicated that this was not adequate to allow the claimant to resume driving for the employer.

The claimant had other full-time employment throughout the time prior to October 2014 through June 4, 2015. When that employment ended, the claimant established a claim for unemployment insurance benefits effective May 31, 2015. He remains able and available for work, and is only unable to return to work with this employer because the employer declines to accept the claimant's cardiologist's release.

## 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. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).

The claimant has demonstrated that he is able to work in some gainful employment, even if he is not allowed to return to work with this employer. Benefits are allowed, if the claimant is otherwise eligible.

An issue arose during the hearing as to whether the claimant is still employed under his normal hours and wages with this employer, or whether some type of separation may have occurred. Even if there was a separation that might be found to be disqualifying, there would be a further issue as to whether there has also been a requalification through his wages with his full-time employer. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on those issues. Rule 871 IAC 26.14(5).

## DECISION:

The representative's June 26, 2015 decision (reference 03) is modified in favor of the claimant. The claimant is generally able to work and available for work effective May 31, 2015. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is **REMANDED** to the Benefits Bureau for investigation and determination of the still employed or possible separation issues.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs