

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACK W HENRY**  
Claimant

**APPEAL NO. 16A-UI-10290-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROFESSIONAL TRANSPORT**  
Employer

**OC: 06/05/16**  
**Claimant: Appellant (2)**

Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Jack Henry filed a timely appeal from the September 15, 2016, reference 03, decision that denied benefits for the week that ended August 13, 2016, based on an agency conclusion that he did not meet the able and available requirements that week. After due notice was issued, a hearing was held on October 5, 2016. Mr. Henry participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-10289-JTT. Exhibits A and B and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO) and the claimant's weekly unemployment insurance claims (KCCO).

**ISSUES:**

Whether Mr. Henry was able to work and available for work during the week that ended August 13, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jack Henry is employed by Professional Transport as full-time van driver. Professional Transport provides transportation services to railroad employees. Mr. Henry's duties involved transporting railroad crews to the train location. Mr. Henry is on-call, 24 hours per day, seven days a week and goes to work when the employer dispatches him to transport a railroad crew. 90 percent of the time, Mr. Henry transports crews from Eagle Grove. At other times, Mr. Henry transports crews from Mason City or Des Moines.

Mr. Henry established an original claim for benefits that was effective June 5, 2016, so that he could obtain unemployment insurance benefits for those weeks wherein the employer does not provide him with full-time work. Workforce Development set Mr. Henry's weekly benefit amount at \$428.00. Mr. Henry has consistently made weekly claims, but has only received benefits for the three weeks that ended June 11, July 9 and August 13, 2016. Mr. Henry reported wages for

each of those three weeks and received a reduced unemployment insurance benefit amount for each of those weeks.

During the week of August 7-13, 2016, Mr. Henry was available for full-time work with the employer. Mr. Henry did not refusal any work. During that week, Mr. Henry performed work for the employer on Sunday, Monday and Tuesday. Mr. Henry requested Wednesday off so that he could go to a doctor appointment in Des Moines and the employer approved the request. Mr. Henry went to an acupuncturist on that day in the hope of alleviating problems that Mr. Henry was having with his left leg. Mr. Henry was experiencing swelling in his ankle. Mr. Henry believed at the time that his leg and ankle issues were caused by poor blood circulation. Mr. Henry returned to work on Thursday. During that shift, Mr. Henry backed into a car. Mr. Henry did not have a crew on board at the time. There was no damage to the employer's van other than some marks on the rear bumper, but the collision caused damage to the grill of the car Mr. Henry backed into. Mr. Henry reported the accident to the employer and the employer sent him home for the rest of the day. The employer did not contact Mr. Henry to work on Friday or Saturday of that week. Mr. Henry's wages for the week totaled \$392.00. Based on that wage report, Workforce Development disbursed \$143.00 in benefits to Mr. Henry for the week that ended August 13, 2016.

#### **REASONING AND CONCLUSIONS OF LAW:**

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(1)a 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.

(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.

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(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.

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

The weight of the evidence establishes that Mr. Henry was able to work, available for work, but partially unemployed during the week that ended August 13, 2016. Mr. Henry requested one day out of seven off so that he could go to a medical appointment. Mr. Henry was otherwise available for work with the employer. The employer elected not to utilize Mr. Henry for at least two days that week. Mr. Henry was eligible for the benefits he received for the week that ended August 13, 2016, provided he meets all other eligibility requirements.

#### **DECISION:**

The September 15, 2016, reference 03, decision is reversed. The claimant was able and available, but partially unemployed during the benefit week that ended August 13, 2016. The claimant is eligible for benefits for that week, provided he meets all other eligibility requirements. The employer's account may be charged for those benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs