

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK E CANNY**  
Claimant

**APPEAL NO. 08A-UI-05619-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR VALLEY MECHANICAL INC**  
Employer

**OC: 12/16/07 R: 03**  
**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Rick Canny, filed an appeal from a decision dated June 10, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 2, 2008. The claimant did not participate on own behalf but offered testimony from his spouse, Martha Canny. The employer, Cedar Valley Mechanical, participated by Owner Mark Hoftender.

**ISSUE:**

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

**FINDINGS OF FACT:**

Rick Canny filed an additional claim for unemployment benefits with an effective date of May 4, 2008. He had been working for Cedar Valley Mechanical as a laborer. He had resumed employment with this company January 22, 2008, and did not have his own transportation to the various job sites. He depended on a co-worker to give him transportation but that person did not always work in the same location.

The claimant's ride to work stopped being available around May 4, 2008. After that he rented a car on one or two occasions, but sometimes the only local car rental agency did not have any vehicles available. Mr. Canny does have a personal vehicle but it is not road worthy beyond a radius of 20 miles from his home. Most of his work as a construction laborer takes place at a greater distance than 20 miles from his home and he has to depend on co-workers to give him a ride to 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 24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

The claimant does not have reliable transportation from his home to any work site more than 20 miles from his home. As a construction laborer much of his work takes place at locations beyond that distance. The only other option is to get a ride from a co-worker but that is also not always available if the co-worker is assigned to another location, quits the job or otherwise declines to continue providing transportation. These circumstances do not constitute reliable transportation to areas where work is usually available. Under the provisions of the above Administrative Code section, this constitutes not being able and available for work and benefits are denied.

**DECISION:**

The representative's decision of June 10, 2008, reference 01, is affirmed. Rick Canny is not able and available for work and benefits are denied.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css