

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE A MORK
Claimant

APPEAL NO. 09A-UI-15966-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORWARD AIR INC
Employer

**Original Claim: 09/13/09
Claimant: Appellant (2)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Dale Mork, filed an appeal from a decision dated October 20, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 30, 2009. The claimant participated on his own behalf. The employer, Forward Air, participated by Terminal Manager Jim Banaszenk.

ISSUE:

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

FINDINGS OF FACT:

Dale Mork began working for Forward Air December 3, 2007, as a full-time driver. He remains employed in that capacity as of the hearing date. In November 2008, the claimant had a medical procedure called a “cardiac version.” When he had his annual DOT physical in September 2009, Mr. Mork’s medical file mentioned this procedure. The corporate office was notified and the claimant was told not to return to work until further notice.

The employer needed to research the procedure to determine exactly what it was and whether it would prevent Mr. Mork from driving under DOT regulations. He was returned to work October 18, 2009, after a second physical cleared him to work without restrictions.

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".

The claimant was never removed from his work duties by a physician. He was laid off pending further investigation by the corporate office of the nature and consequences of a cardiac version. There is nothing to support a finding the claimant was not able and available for work for the time period September 13 through October 18, 2009.

DECISION:

The representative's decision of October 20, 2009, reference 01, is reversed. Dale Mork is able and available for work and eligible for unemployment benefits, provided he is otherwise qualified.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw