

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY W BOHANNON**  
Claimant

**APPEAL NO. 13A-UI-00899-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 12/02/12**  
**Claimant: Respondent (1-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 16, 2013 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on February 25, 2013. Claimant participated. Employer participated through human resources assistant Dave Dalmasso.

**ISSUE:**

Is the claimant able to and available for work effective December 2, 2012?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver until December 6, 2012. His last day of work was November 17, 2012. He remains on Family Medical Leave Act (FMLA) because of a non-work-related illness, Chronic Obstructive Pulmonary Disease (COPD). The condition was exacerbated because he sprayed a replacement truck cab with an insecticide for an infestation of bedbugs and there was a delay in medical treatment until he was routed home. On December 6, 2012 treating physician Barry Cigal, M.D. released him to work except driving tractor trailer since he is required to be on oxygen every eight to ten hours. The separation has not been determined at the IWD claims level.

**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 effective December 2, 2012.

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".

871 IAC 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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Since the employment ended on December 6, 2012, claimant is no longer obligated to return to the employer to offer his services. He is considered able to work even if he cannot return to the job he most recently performed for the employer. Thus claimant is considered as able to work.

Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The representative's decision dated January 16, 2013 (reference 01) is affirmed. The claimant is able to work and available for work effective December 2, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:**

The December 6, 2012 medical separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs