

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMI L RICE
Claimant

APPEAL NO. 13A-UI-09223-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PUTMAN INC
Employer

OC: 07/07/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 2, 2013, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 16, 2013. Claimant responded to the hearing notice instructions but was not available at the number provided when the hearing was called, did not participate or return the ALJ's September 11, 2013, phone message offering to reschedule the hearing, and did not return the ALJ's message when the hearing was called. Employer participated through area director Amy Shaffer. The administrative law judge took official notice of the administrative record and read the claimant's appeal letter into the record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part-time as a LPN/home health aide and attends school full-time. Her availability became increasingly limited and frequently changed after May 2013, so her hours were reduced accordingly. (Administrative Record) She has been assigned more hours as her availability increased the first week of August 2013. The employer has also asked her to work on dates/times she does not list herself as available and she had accepted some of those shifts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 24.22(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.

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Although claimant may have a base period of working while attending school, since she limited the number of days or shifts she could work due to school and family obligations, and the employer was not obligated to provide a certain number of part-time hours, the reduction in wages was not attributable to the employer. Accordingly, benefits are denied.

DECISION:

The August 2, 2013 (reference 03) decision is affirmed. The claimant is not able to work and available for work effective July 7, 2013. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs