

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY I WALKER
Claimant

APPEAL NO. 10A-UI-04265-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM LTD – SERVICEMASTER GREEN
Employer

**Original Claim: 02/21/10
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

ABM, Ltd. filed an appeal from a representative's decision dated March 12, 2010, reference 01, which held that Shelley Walker satisfied the availability requirements of the law. After due notice was issued, a hearing was held by telephone on May 3, 2010. The employer participated by Gregg Stearns, Human Resources Manager. Ms. Walker did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Walker satisfied the availability requirements of the law as of February 10, 2010.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Walker began working for ABM, Ltd. on August 16, 2007. She worked full-time cleaning. Her last day of work was February 23, 2010. She had been working at 801 Grand Avenue in downtown Des Moines, but was removed from the assignment at the client's request. Her removal was requested because she was using her cell phone at work and because she was not taking her lunch in designated areas. ABM, Ltd. did not discharge her from employment, but sought a different placement.

On March 16 and 17, messages were left for Ms. Walker concerning a new placement. She called during the week ending March 27 and declined the offer of work at Country Club Office Plaza in West Des Moines. She indicated the assignment was too far from home.

Ms. Walker filed a claim for job insurance benefits effective February 21, 2010. She has received total of \$2,852.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Walker has satisfied the availability requirements of the law since filing her claim for benefits effective February 21, 2010. In order to receive benefits,

an individual must be available for work. Iowa Code section 96.4(3). Ms. Walker had the burden of proving that she satisfied the requirements of the law. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The administrative law judge notes that ABM, Ltd. is not a temporary placement firm where an individual may have multiple assignments of varying lengths at different times. Ms. Walker was not separated from employment when she was released from 801 Grand Avenue on February 23, she was simply on a layoff due to lack of work while the employer sought a new placement for her.

Ms. Walker declined work in West Des Moines because it was too far from home. It is not unreasonable to expect a claimant living in Des Moines to accept work in the metropolitan Des Moines area, which includes West Des Moines. Ms. Walker did not participate in the hearing to explain why she could not accept the work offered to her in March. The inability to work in the metropolitan Des Moines area severely limits an individual's availability for work. For the above reasons, the administrative law judge concludes that Ms. Walker has failed to satisfy her burden of proving that she is available for work within the meaning of the law. Moreover, she was not available to the employer that laid her off. See 871 IAC 24.23(41).

Ms. Walker has received benefits since filing her claim. Based on the decision herein, the benefits now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 12, 2010, reference 01, is hereby reversed. Ms. Walker was not available for work effective February 21, 2010. Benefits are denied until such time as she satisfies Workforce Development that she is available for work, provided she is otherwise eligible. Ms. Walker has been overpaid \$2,852.00

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw