

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BERNICE THOMPSON**  
Claimant

**APPEAL NO. 13A-UI-09047-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 06/23/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 30, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in-person hearing was held on October 1, 2013 at Des Moines, Iowa. Claimant participated along with her witness Bobbie Edwards, the parent of former client. Employer participated through (representative) Danielle Caswell, Program Supervisor; James Lewton, Services Coordinator; and Melinda Pollmeir, Director of Human Resources. Employer's Exhibit One was entered and received 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 was employed full time as a case worker beginning in May, 2009 through date of hearing as she remains employed. The claimant had difficulty staying caught up with her notes. The notes were imperative for the employer to proceed with billing and get paid for the services the claimant was providing. The totality of the evidence clearly establishes that the claimant had personal issues in her life and wanted to take a break from work. The claimant requested to be off work. The employer did not suggest or even want to take the claimant off work; they did so only at the claimant's specific request to both Ms. Caswell and Mr. Lewton. The claimant read and signed Employer's Exhibit One which clearly states: "Bernice will be taking a break and will contact her supervisor if/when she decides to return to work...." The claimant knew that Ms. Caswell was her supervisor. The claimant has never contacted Ms. Caswell to ask for additional work. Additional work is and always has been. The claimant needs only to ask for it. The claimant is not working for this employer today, simply because she has not asked to come back to work. An employer is reasonably allowed to expect employees to complete all of their assigned tasks in a reasonable amount of time.

## 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 § 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)j(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant requested and was given a leave of absence to be off work until she was ready to come back. She has not requested to come back to work as set out in her agreement with the

employer. Thus, she is considered not able to and available for work. Accordingly, benefits are denied.

**DECISION:**

The July 30, 2013, (reference 01) decision is affirmed. The claimant is not able to work and available for work effective June 17, 2013. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css