

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE M WILSON
Claimant

APPEAL NO. 08A-UI-10634-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLIVE CHILDREN CENTER INC
Employer

OC: 10/19/08 R: 02
Claimant: Appellant (5R)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 7, 2008, reference 01, decision that denied benefits as of October 3, 2008 although the original claim date was not effective until October 19, 2008 and there was not a claim on file as of October 3, 2008. After due notice was issued, a telephone conference hearing was held on December 1, 2008. Claimant participated and was represented by Veronica Franck, Attorney at Law. Employer participated through Elaine Idso and Sue Stockham.

ISSUE:

The issue is whether claimant is able to and available for work effective October 19, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time preschool teacher and worked from November 1, 2005 until October 3, 2008. She took a voluntary medical leave until October 20 and returned to work. She was on the schedule to work from October 20 through 24, 2008 as a part-time floater or substitute worker, but not full-time preschool teacher hours. She did not work any of those hours that week. She did not contact employer about work again until after receipt of the November 7, 2008 representative's decision finding her unavailable for work. The separation from employment then occurred sometime on or between October 20 and October 24, 2008 and that issue has not yet been the subject of a fact-finding interview or representative's decision.

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) 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(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

871 IAC 24.23(1), (16) and (18) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

Since the parties agreed claimant would return to work on October 20 at the conclusion of her medical leave, she was medically able to work as of that date. The question then remains whether she was available for work. Since she was on the schedule from October 20 to 24 and did not work she is considered unavailable through the date of the separation to be determined by a fact-finding interview pursuant to remand. Accordingly, benefits are denied effective October 19, 2008.

DECISION:

The November 7, 2008, reference 01, decision is modified without change in effect. The claimant is not able to work and available for work effective October 19, 2008, not as of October 3, 2008, which was prior to the effective date of the claim. Benefits are denied.

REMAND: The separation issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination. It is suggested that both parties arrange for exchange and presentation of documentation and witness statements in support of their case according to the fact-finding interview notice instructions.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css