

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSIE L CLAYBON**

Claimant

**APPEAL NO. 14A-UI-03478-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWKEYE COMMUNITY COLLEGE**

Employer

**OC: 10/20/13**

**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 26, 2014, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a hearing was held on April 22, 2014. The claimant did participate. The employer did through John Clopton, Executive Director of Human Resource Services and (representative) Janine Knapp, Associate Director of Human Resources.

**ISSUE:**

Was the claimant able to and available for work from October 20, 2013 through February 3, 2014?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is still employed with this employer on a part-time basis averaging twenty-six hours per week. Since the time of her hire claimant has averaged twenty-six hours per week. The claimant had surgery on October 20, 2013 for a non-work-related illness or injury and was not released to return to work with restrictions until November 18, 2013. When she was released to return to work she was limited by her treating physician to only three or four hours per day due to her medical condition. At all times the employer had available for the claimant her regular work schedule, but the claimant did not work it due solely to her medical condition. The employer has accommodated the claimant's work restrictions.

**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 from October 20, 2013 through February 3, 2014.

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.

The claimant underwent surgery for a non-work-related injury or illness and was not able to work her regular schedule solely due to her medical condition. The claimant's physician limited her hours of work. Accordingly, benefits are denied for the period of time when the claimant was restricted from working at all or from working her regular hours due to her medical condition. The claimant was not able to and available for work from October 20, 2013 through February 3, 2014.

**DECISION:**

The March 26, 2014, (reference 01) decision is reversed. The claimant is not able to work and available for work effective October 20, 2013 through February 3, 2014. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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