

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VALARIE STANLEY
Claimant

**PHIPPSBURGERINC/ACCESSIBLE HOME
HEALTH CARE**
Employer

APPEAL 16A-UI-09355-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/15/15
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the August 19, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. An in-person hearing was held on September 13, 2016. Claimant participated along with her daughter, Haley Stanley, who acted as a witness on her behalf. Employer participated through Angie Burger, Owner/Administrator. Employer's exhibit's C and D were entered and received into the record.

ISSUE:

Is the claimant considered able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of November 15, 2015. Her claim does not expire until November 13, 2016. On August 6, 2016 the claimant had an active claim for unemployment insurance benefits.

The claimant was hired to as a care giver in 2014. She and all other employees who are care givers are hired to work on an as needed basis only. The employer does not guarantee any employee, including the claimant that there will be work available nor is any employee given a guaranteed or set schedule. The employer's own caregiver agreement makes clear that assignments are on a "case by case" basis. The claimant was an on-call worker for purposes of unemployment insurance benefits. The claimant had been off work from March 5 until July 2016 for a knee replacement operation. She returned to work in August and was set to work for a client who unfortunately passed away. There was no other work available for the claimant at that time. She worked an additional two days on August 14 and 15.

Claimant has no other regular employment in the base period.

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".

Iowa Admin. Code r. 871-24.22(2)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Iowa Admin. Code r. 871-24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as needed, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Accordingly, benefits must be denied.

DECISION:

The August 19, 2016, (reference 02) decision is reversed. The claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs