

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLEY M DUEHR
Claimant

CITY OF DUBUQUE
Employer

APPEAL NO. 21A-UI-04169-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 26, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on April 5, 2021. Claimant participated personally. Employer participated by Tusdee Blus and Russ Stecklein. Claimant's Exhibits A-G were admitted into evidence.

ISSUES:

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant has worked as a part-time bus driver for employer since October 2018. After July 2019 claimant was able to choose hours to fit her schedule. Claimant averaged 23 hours/week prior to Covid. She consistently received at or around 21 hours and often worked more. After Covid, claimant's hours were greatly reduced to less than 10 hours a week. This continued from June 1, 2020 through January 9, 2021.

At all times, claimant remained able and available to work her regular hours if those hours were available to her.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

At all times relevant to this hearing, claimant was able and available to work her established hours if those hours were available to claimant. Benefits shall be allowed effective May 31, 2020.

DECISION:

The decision of the representative dated January 26, 2021, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective May 31, 2020, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

April 8, 2021
Decision Dated and Mailed

bab/scn