

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA BURNIGHT**  
Claimant

**APPEAL NO: 07A-UI-02549-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VISINET OF IOWA INC**  
Employer

**OC: 01/21/07 R: 01  
Claimant: Respondent (4)**

Section 96.4-3 - Able and Available for Work  
Section 96.5-1-a - Voluntary Leaving - Other Employment

**STATEMENT OF THE CASE:**

Visinet of Iowa, Inc. (employer) appealed an unemployment insurance decision dated February 27, 2007, reference 01, which held that Angela Burnight (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant participated in the hearing. The employer participated through Amy Harrington, Executive Director and Melinda Zobel, Office Manager. The parties waived formal notice to the issue of whether the claimant is able and available to work so that it could be addressed in this hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether her voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer provides in-home family services and its employees are responsible for getting their own hours through referrals from the case managers at the Iowa Department of Human Services (DHS). The claimant was hired as a part-time in-home provider on March 1, 2004. She went to full-time but was eventually reduced to part-time again near the end of her employment in November 2006 until she quit for other employment on March 5, 2007. At the time she was hired, she was given a case load and several of those cases were worked jointly with other employees. In July 2006, the claimant testified several employees left to start their own businesses and the claimant lost a lot of her joint clients as a result. In October 2006, DHS made changes in the department as to how they gave referrals and as to the services that could be provided from individuals who did not have formalized training. After these changes, the claimant could not get sufficient referrals to keep her hours at a full-time level. The employer issued the claimant a written warning on November 13, 2006 that she signed and which advised her that if her hours were not increased, she would be reduced to

part-time status. The employer realized the claimant had more difficulty getting referrals but believed the claimant could have obtained more than she was getting. The employer understood the claimant subsequently chose to go to part-time but the claimant testified she went to part-time only because she had no other choice. She lost vacation hours to which she was entitled to as a result of reducing to part-time status and would not willingly have given up those hours. The claimant found other employment on March 5, 2007 with the South Sioux City School District and she voluntarily quit at that time.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22.

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 has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She testified that she was able and available to work and her testimony is found credible. The fact that she obtained a second part-time job when she could not obtain sufficient hours with the employer is

further evidence of that fact. The claimant does meet the availability requirements of the law from January 21, 2007 through March 3, 2007.

The next issue to be determined is whether the claimant's voluntary separation from employment on March 5, 2007 qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1. The evidence demonstrates the claimant quit her employment after she found another job with the South Sioux City School System.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the employer's account shall not be charged after March 3, 2007.

**DECISION:**

The unemployment insurance decision dated February 27, 2007, reference 01, is modified in favor of the appellant. The claimant met the availability requirements from January 21, 2007 through March 3, 2007, when she quit for other employment. Benefits are allowed but the employer's account shall not be charged after March 3, 2007.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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