

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN JANSEN**  
Claimant

**APPEAL NO. 08A-UI-06214-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAYLE'S BOOKKEEPING & TAX SERVICE**  
Employer

**OC: 09/30/07 R: 01**  
**Claimant: Respondent (1/R)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Gayle's Bookkeeping & Tax Service, Inc. (employer) appealed an unemployment insurance decision dated July 3, 2008, reference 04, which held that Dawn Jansen (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 July 22, 2008. The claimant participated in the hearing. The employer participated through owner, Gayle Lemmon and Trish Braby, Office Manager. Claimant's Exhibit A was admitted into evidence. 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 to work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective September 30, 2007. She was hired as a full-time bookkeeper on October 10, 2007 and continued in this employment until July 9, 2008 when she was discharged. The claimant contends she was initially only working part-time and filed weekly claims through the week ending December 1, 2007. The claimant reported no wages in her weekly claims for the five-week period ending November 10, 2007 but the employer said that she was working and being paid for full-time hours.

The claimant testified her hours were reduced on approximately June 1, 2008 and she began filing for weekly benefits. The employer contends the claimant's reduction in hours was at her own request because she wanted to spend more time with her children. The employer completed a protest on June 9, 2008 indicating the same. Apparently the claimant went to the employer and told the employer her account would not be charged for any unemployment benefits paid to her, since the employer was not a current base period employer. The employer subsequently signed a document which reported that the claimant's hours were reduced due to a lightened workload after the tax season. The document further stated, "Per my phone

conversation with Michelle this morning, the claimant would not effect (*sic*) my account and the current claim is still under her previous employer First Federal Savings Bank. This is my written statement that I am not protesting the above referenced claim. I see no need for the hearing since both my employee and I agree." Michelle is evidently an Iowa Workforce employee. This document was addressed to Iowa Workforce Development and dated on June 24, 2008. The employer testified at the hearing that the claimant slipped in this document with other papers and the employer did not know what she was signing. The claimant testified that she is able and available to work.

An issue as to whether the claimant reported income from her employer arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded to Quality Control for an investigation and determination as to whether the claimant had earned but unreported wages. 871 IAC 26.14(5). The separation issue has also not yet been litigated and will be remanded for further determination on that issue.

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

The 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 he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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.

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 she is able and available to work. The claimant introduced a written document signed by the employer on June 24, 2008 which provides that her reduction in hours was due to the lightened workload after the tax season. The employer's explanation that she signed the document without knowing what she was signing is not credible. The claimant has met her burden that she is able and available for work. She qualifies for unemployment insurance benefits, provided she is otherwise eligible.

Additional issues arose during the hearing, which were not included in the written notice of hearing, and the case will be remanded for an investigation and determination on those issues. 871 IAC 26.14(5).

**DECISION:**

The unemployment insurance decision dated July 3, 2008, reference 04, is affirmed. The claimant qualifies for unemployment insurance benefits, provided she is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css