

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE A DAVIS
Claimant

APPEAL NO. 07A-UI-04878-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**QUALITY HOME CARE PROFESSIONALS
INC**
Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (4)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jackie Davis filed a timely appeal from the May 7, 2007, reference 01, decision that denied benefits effective April 8, 2007 and that concluded she was still employed for the same hours and wages. After due notice was issued, a hearing was held on May 30, 2007. Ms. Davis participated. Mary Jo Noftsgar, Vice President, represented the employer. The administrative law judge took official notice of the documents the parties submitted for the fact-finding interview and received Claimant's Exhibit A into evidence. The hearing in this matter was consolidated with the hearing in appeal number 07A-UI-04879-JTT.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his/her claim for benefits.

Whether the claimant is still employed for the same hours and wages.

Whether the claimant experienced a period of partial unemployment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jackie Davis commenced her employment with Quality Home Care Professionals as a part-time homemaker/health aide in September 2005. Prior to the week that began April 8, 2007, Ms. Davis worked an average of 20 hours per week. During the period of April 8-14 and April 15-21, the employer reduced Ms. Davis' hours by half or more to provide hours to another employee. Ms. Davis had not changed her work availability. In response to the reduction in hours and uncertainty about her ability to receive the 20 hours per week she had previously enjoyed, Ms. Davis commenced new employment on April 23, 2007 that greatly reduced her availability for work with Quality Home Care Professionals. Ms. Davis continues with Quality Home Care under significantly reduced hours. Ms. Davis' new, second job provides Ms. Davis with 30 hours per weeks during the hours Ms. Davis previously worked for Quality Home Care Professionals.

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".

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.

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

Iowa Work Development Rule 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The evidence establishes that during the benefit weeks of April 8-14 and April 15-21, 2007, Ms. Davis was partially unemployed as a result of the employer greatly reducing her hours of employment to provide hours to another employee. Ms. Davis is eligible for benefits for the benefit weeks that ended April 14 and April 21, 2007, provided she is otherwise eligible. The employer's account may be charged. The evidence further indicates that as of April 23, 2007, Ms. Davis was sufficiently employed to remove her from the labor market and, therefore, no longer met the availability requirements of Iowa Code section 96.4(3). Accordingly, Ms. Davis is not eligible for benefits effective the benefit week that began April 22, 2007.

DECISION:

The Agency representative's May 7, 2007, reference 01 decision is modified in favor of the appellant/claimant as follows. The claimant was partially unemployed during the benefit weeks that ended April 14 and April 21, 2007, and is, therefore, eligible for benefits for those two weeks, provided she is otherwise eligible. The employer's account may be charged. Effective April 23, 2007, the claimant was employed to an extent that made her unavailable for work referrals. Accordingly, the claimant is ineligible for benefits effective the benefit week that began April 22, 2007.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs