

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WARNER, TRACI, L**  
Claimant

**APPEAL NO. 12A-UI-09530-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/24/12**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) -Able & Available

**STATEMENT OF THE CASE:**

Traci Warner appealed from an unemployment insurance decision dated August 7, 2012, reference 02, that denied benefits for the benefit week ending August 4, 2012 based on a conclusion that she was not available for work that week. A telephone hearing was scheduled for August 29, 2012. The claimant did not make herself available for the hearing but BELATEDLY submitted a letter, dated September 11, 2012, in lieu of appearing and participating in the hearing. The letter was received into evidence as Exhibit A along with the claimant's appeal letter and attached childcare receipt, which were received into evidence as Exhibit B.

**ISSUE:**

Whether the claimant was available for work during the week that ended August 4, 2012.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Traci Warner established a claim for unemployment insurance benefits that was effective June 24, 2012 and received benefits for the period of June 24, 2012 through July 28, 2012. Ms. Warner notified Workforce Development of her intent to go on vacation during the week that ended August 4, 2012. Ms. Warner ended up not going on vacation. Ms. Warner's eldest teenage daughter has a one-year-old son and both resided with Ms. Warner until July 24, 2012. Ms. Warner's daughter did not return that day or that night. Instead, Ms. Warner's daughter told her she and the grandchild were not coming home. Ms. Warner has been her grandson's primary caretaker. Until the daughter and the grandchild returned home on August 2, Ms. Warner was worried, distraught, sleepless, and preoccupied with attempting to contact her daughter to persuade the daughter to return home. Ms. Warner was in contact with her attorney during that time to see what assistance the attorney could provide in persuading or compelling the daughter to return home. Ms. Warner kept her six-year-old daughter in daycare while she was preoccupied with the crisis concerning her eldest daughter and her grandson.

## **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.

While the available evidence supports Ms. Warner's assertion that she did not go on vacation, it also indicates that she was not available for work and was not conducting an active and earnest work search during the week that ended August 4, 2012. Instead, she spent almost all that week preoccupied with a family crisis. Ms. Warner was not eligible for unemployment insurance benefits for the week that ended August 4, 2012.

**DECISION:**

The Agency representative's August 7, 2012, reference 02 ,decision is modified as affirmed. The claimant was not available for work during the week that ended August 4, 2012 and is not eligible for benefits for that week.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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