

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSE M HENSON
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 17A-UI-07262-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/02/17
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 14, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2017. The claimant participated personally. The employer participated through Sarah Fiedler, human resources generalist. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective July 2, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an unemployment insurance claim with an original claim date (OC date) of July 2, 2017, in response to being unable to work her entire work week, consisting of 40 hours, due to the July 4, 2017 holiday. She filed for one week only.

The claimant works on assignment at Winegard, earning \$11.00 per hour for 40 hours a week. Due to the July 4, 2017 holiday, the claimant was only able to work 20 hours that week, but was available to work all shifts. For the week ending July 8, 2017, she earned \$220.00 in gross wages. Her weekly benefit amount (WBA) is \$352.00.

The claimant has resumed working full-time on assignment since July 9, 2017.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to and available for work July 2 through 8, 2017. She is not able to and available for work effective July 9, 2017.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(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.

In this case, the claimant established a claim on July 2, 2017 in response to the employer permitting the claimant to work 20 of her usual 40 hours for the week ending July 8, 2017, due to the holiday. The claimant earned \$220.00 in wages, less than her weekly benefit amount of \$352.00.

Effective July 9, 2017, she resumed full-time employment at her usual hours and wages. Based on the evidence presented, the administrative law judge concludes the claimant was able and available for work for the week ending July 8, 2017. Effective July 9, the claimant removed herself from the labor market to a degree that deems her ineligible to meet the eligibility requirements. Therefore, the administrative law judge concludes the claimant is able and available for work for the week of July 2 through 8, 2017 only.

REMAND: The issue of whether the claimant was partially unemployed for the week ending July 8, 2017, in accordance with Iowa Code § 96.19(38)a & b and Iowa Code § 96.7(2)a delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The July 14, 2017, (reference 01) decision is modified in favor of the appellant. The claimant was able to work and available for work effective July 2, 2017 through July 8, 2017 only, and allowed benefits, provided she otherwise is eligible. The claimant is not able to and available for work effective July 9, 2017 because she has removed herself from the labor market. Benefits are denied effective July 9, 2017.

REMAND: The issue of whether the claimant was partially unemployed for the week ending July 8, 2017, in accordance with Iowa Code § 96.19(38)a & b and Iowa Code § 96.7(2)a is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn