

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L HART
Claimant

APPEAL NO. 09A-UI-10322-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY ACTION OF EASTERN IOWA
Employer

**Original Claim: 05/31/09
Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Community Action of Eastern Iowa filed an appeal from a representative's decision dated July 13, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding that the claimant was unemployed due to a short-term layoff and was able and available for work during the layoff. After due notice was issued, a telephone conference hearing was scheduled for and held on August 6, 2009. Ms. Hart participated personally. The employer participated by Ms. Pam Damhorst, human resource benefit administrator.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Rebecca Hart was employed as a full-time, twelve-month-per-year educational assistant for Community Action of Eastern Iowa beginning on April 21, 2008. The claimant declined to continue in her twelve-month-per-year, full-time position with the employer, because the facility where she had worked at, approximately 2800 Eastern Avenue Davenport, Iowa, was closing and the claimant did not want to travel approximately three miles further to an alternative location that was immediately available to her. The claimant declined the offer of continuing employment at her same job duties, rate of pay, and hours, because of personal limitations on the time that she had available.

The claimant believed that the alternative job location at the community college required too much travel time due to congestion and that that would affect child care for her four children, the claimant's ability to comply with court-ordered visitations, and therefore declined the offer. Ms. Hart therefore left her full-time, twelve-month position with Community Action of Eastern Iowa to assume a nine-month-per-year position with the same organization at a preferred work site. The claimant opened a claim for unemployment insurance benefits May 31, 2009, and has been drawing unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work.

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.

871 IAC 24.23(16) and (18) provide:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The evidence in the record establishes that Ms. Hart declined ongoing full-time, twelve-month-per-year employment because of limitations on her availability. The claimant chose not to accept the same employment at the same hours and wages approximately three miles' distance from her previous work location because of restrictions that included child care, court-ordered visitations, and other factors that the claimant contends were caused or affected by the extra time it took her to drive to the alternate work location. The administrative law judge concludes that the claimant is not willing to work during the hours in which suitable work for the claimant is available and because the claimant has unduly limited her willingness to work only in specified areas although suitable work is available to the claimant in other areas where the claimant is reasonably expected to be available for work. Accordingly, benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the UIS division for determination.

DECISION:

The representative's decision dated July 13, 2009, reference 01, is reversed. The claimant is disqualified for being unavailable for work and benefits are withheld until she has removed the limitations on her availability to work. The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the UIS division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw