

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HERCILE T BOOTH**  
Claimant

**CEDAR RAPIDS COMM SCHOOL DIST**  
Employer

**APPEAL 19A-UI-07897-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/16/19**  
**Claimant: Respondent (4-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On October 10, 2019, Cedar Rapids Comm School Dist (employer) filed an appeal from the October 1, 2019, reference 04, unemployment insurance decision that allowed benefits effective August 25, 2019 based upon the determination Hercile T. Booth (claimant) had made herself able to and available for work. After due notice was issued, a telephone conference hearing was held on October 29, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Brandon Johnson, Human Resources Specialist, and Erica Shelangoski, Safety and Training Supervisor. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents for the appealed decision, the fact-finding documents for the deleted reference 06 decision, the unemployment insurance decisions reference 01 and 02, the claimant's claim history, and the claimant's wage history.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work effective August 25, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time, 32 hours a week, as a Transportation Driver beginning December 3, 2018. She worked through the end of the 2018-2019 school year and had reasonable assurance of continued employment in the 2019-2020 school year.<sup>1</sup> Throughout the summer, the claimant also worked on-call or part-time with Area Substance Abuse Counsel (account number 146842) and was entitled to partial unemployment benefits.<sup>2</sup>

On August 19, 2019, the employer reached out to the claimant as she had not returned for orientation. She notified the employer she had obtained other full-time employment over the

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<sup>1</sup> Unemployment Insurance Decision issued July 19, 2019, reference 02.

<sup>2</sup> Unemployment Insurance Decision issued July 17, 2019, reference 01.

summer and would not be returning. The administrative record shows the claimant was paid wages in the third quarter by Schneider National Carrier (account number 190161). She also worked full-time for RDK Lines, in Illinois, as an independent contractor from September 4 through September 21. The claimant has reported wages earned each week from the week of August 25 through the week ending November 2, with the exception of the two-week period from October 6 through October 19. The claimant was re-hired back into her transportation driver position with the employer on October 28.

The claimant's separation from the employer on August 19, 2019 has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD). Whether the claimant is partially unemployed with the employer effective October 27, 2019 or whether she is employed at the same hours and wages has not yet been investigated or adjudicated by the Benefits Bureau of IWD. The claimant's separation from Schneider National Carrier (account number 190161) has not yet been investigated or adjudicated by the Benefits Bureau of IWD.

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

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work, available for work, and actively and earnestly seeking work from August 18 through the week ending September 22, 2019. Benefits are denied for that time period. Benefits are allowed effective September 23, 2019, provided the claimant is otherwise eligible.

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".

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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 provides, in relevant part:

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

...

(7) Where an individual devotes time and effort to becoming self-employed.

...

(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant told the employer she was employed full-time effective August 19, 2019 as that was the reason she did not return to the employer. She then devoted time to being self-employed from September 1 through the week ending September 22, 2019. The claimant has not met the burden of proof to establish she was able to and available for work during that timeframe. Benefits are denied from August 18 through September 22, 2019.

The record shows the claimant was able to and available for work effective September 23, 2019 because she was no longer employed full-time or devoting time to being self-employed. Benefits are allowed, provided she is otherwise eligible.

The claimant's separation from the employer on August 19, 2019 is remanded for a fact-finding interview to include both parties and an unemployment insurance decision issued to both parties with appeal rights. Whether the claimant is partially unemployed with the employer effective October 27, 2019 or whether she is employed at the same hours and wages is remanded for a fact-finding interview to include both parties and an unemployment insurance decision issued to both parties with appeal rights. The claimant's separation from Schneider National Carrier (account number 190161) before or during the third quarter of 2019 is remanded for a fact-finding interview to include both parties and an unemployment insurance decision issued to both parties with appeal rights.

**DECISION:**

The October 1, 2019, reference 04, unemployment insurance decision is modified in favor of the appellant. The claimant was not available for work from August 18, 2019 through September 22, 2019 and benefits for that time period are denied. The claimant is able to and available for work effective September 23, 2019 and benefits are allowed after that date, provided she is otherwise eligible.

**REMANDS:**

The claimant's separation from the employer on August 19, 2019 is remanded for a fact-finding interview to include both parties and an unemployment insurance decision issued to both parties with appeal rights.

Whether the claimant is partially unemployed with the employer effective October 27, 2019 or whether she is employed at the same hours and wages is remanded for a fact-finding interview to include both parties and an unemployment insurance decision issued to both parties with appeal rights.

The claimant's separation from Schneider National Carrier (account number 190161) before or during the third quarter of 2019 is remanded for a fact-finding interview to include both parties and an unemployment insurance decision issued to both parties with appeal rights.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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