

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OLUDAYO O AYODELE**  
Claimant

**APPEAL NO. 08A-UI-06447-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID-STEP SERVICES INC**  
Employer

**OC: 06/01/08 R: 01  
Claimant: Appellant (1-R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.7(2)(a)(2) – Still Employed - Same Hours, Same Wages

**STATEMENT OF THE CASE:**

Oludayo Ayodele filed a timely appeal from the July 7, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2008. Ms. Ayodele participated. Jan Hackett, Human Resources Director, represented the employer. Exhibits One through Five were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-06448-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**ISSUE:**

Whether the claimant has met the work availability requirements of Iowa Code section 96.4(3) since she established the claim for benefits that was effective June 1, 2008.

Whether this employer is liable for benefits in connection with the claim the was effective June 1, 2008.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Oludayo Ayodele started working for Mid-Step Services in June 19, 2004. The employer provides round-the-clock supervision and support to mentally challenged persons. Until August 5, 2007, Ms. Ayodele worked as a full-time cook. Ms. Ayodele's hours in the full-time position were 5:30 a.m. to 1:30 p.m. On July 13, 2007, Ms. Ayodele had requested to transfer to a part-time (16 hours per week) Supported Community Living Assistant position. Ms. Ayodele made the request because her husband's work shift had changed and he was no longer available to care for the couple's children in the morning and/or get the two school-age children off to school. The employer continued to have full-time employment for Ms. Ayodele, but granted her request to transfer to the part-time position. On November 4, 2007, Ms. Ayodele requested to transfer to new part-time (16 hours per week) Home and Community Based Services (HCBS) Assistant position. The employer granted Ms. Ayodele's transfer request. In the part-time positions, Ms. Ayodele has worked 4:00 to 11:00 p.m. one evening per week and every other weekend.

The weekend work includes 9:00a.m. to 3:00 p.m. shifts on Saturday and Sunday. Ms. Ayodele has received wage increases and has not suffered a decrease her wages. The employer has at all times had full-time employment available for Ms. Ayodele. The employer has three shifts for full-time employees: 5:30 a.m. to 1:30 p.m., 1:30 to 9:30 p.m., and 9:30 p.m. to 5:30 a.m. Ms. Ayodele has not pursued further full-time employment because the hours conflict with her parental responsibilities.

In January 2008, Ms. Ayodele started working on a part-time basis (22 hours per week) for Community Action Agency in Sioux City. Ms. Ayodele's hours at Community Action Agency were 8:15 a.m. to 1:45 p.m. Community Action Agency laid Ms. Ayodele off effective May 29, 2008 in connection with the Sioux City school district's summer break. Ms. Ayodele expects to return to her part-time position at Community Action Agency in connection with the beginning of school in the fall.

### **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.

Workforce 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(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.23(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.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The weight of the evidence indicates that in August 2007, Ms. Ayodele voluntarily reduced her full-time work hours to 16 hours per week at Mid-Step Services, Inc., because she lacked child care that would allow her to work the full-time hours she had previously worked throughout the employment. The evidence indicates that the employer continued to have full-time work available to Ms. Ayodele.

The weight of the evidence indicates that Ms. Ayodele has not met the work availability requirements of Iowa Code section 96.4(3) since she established the claim for benefits that was effective June 1, 2008. Accordingly, Ms. Ayodele is ineligible for benefits, effective June 1, 2008.

Iowa Code section 96.7(2)(a)(2) provides, in relevant part, as follows:

if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

Based on the statute and administrative rules cited above, the administrative law judge concludes that Mid-Step Services, Inc., should be relieved of benefit charges so long as Ms. Ayodele continues to receive the same employment from Mid-Step Services, Inc.

The evidence raises the issue of whether Ms. Ayodele's temporary separation from Community Action Agency is subject to the between academic terms disqualification provisions of Iowa Code section 96.4(5). That issue alone is remanded to the Claims Division for determination.

**DECISION:**

The Agency representative's July 7, 2008, reference 01, decision is affirmed. The claimant has not met the work available requirements of Iowa Code section 96.4(3) since establishing her claim for benefits. Accordingly, the claimant is ineligible for benefits effective June 1, 2008.

The issue of whether the claimant's May 29, 2008 separation from Community Action Agency is covered by the between academic terms disqualification provision of Iowa Code section 96.4(5) is remanded to the Claims Division for determination.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs