

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEMARIE B GREEN
Claimant

APPEAL NO. 12A-UI-05050-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADTRACK CORP
Employer

OC: 12/11/11
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Rosemarie Green, filed an appeal from a decision dated April 26, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 22, 2012. The claimant participated on her own behalf. The employer, Adtrack, participated by Manager of Human Resources Tracy Grove.

ISSUE:

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

FINDINGS OF FACT:

Rosemarie Green began employment with Adtrack on May 26, 2010, as a part-time, on-call worker at the contact center. She was not guaranteed any minimum number of hours per day, week, or pay period. There are seasonal slowdowns, such as the winter holidays, and that was the time during which Ms. Green filed her claim for benefits.

Although not much regularly scheduled work was available, the claimant was frequently offered other hours and shifts as needed and she declined a fair number of them. This is not held against the on-call employees by the company, it merely reduces the number of their work hours.

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 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant was advised she was a part-time employee without any guarantee of hours. She can work more hours than are officially scheduled if the employer needs extra workers, but is not required to do so. More work was available to her during the time she filed for unemployment benefits, but she declined to work many of the hours. She therefore is not considered able and available for her regular employer and benefits are denied.

DECISION:

The representative's decision of April 26, 2012, reference 01, is affirmed. Rosemarie Green is not eligible for unemployment and benefits are denied.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw