

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANEEN M CLARK**  
Claimant

**APPEAL NO. 09A-UI-10786-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DISCOVERY LIVING INC**  
Employer

**Original Claim: 06/14/09  
Claimant: Appellant (4/R)**

Section 96.4-3 – Availability for Work

**STATEMENT OF THE CASE:**

Daneen M. Clark (claimant) appealed a representative's July 24, 2009 decision (reference 01) that concluded she was not eligible to receive benefits as of June 14, 2009, because she restricted the hours she was willing to work for Discovery Living, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2009. The claimant participated in the hearing. Carol Saddoris and Shannon Brown appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Should the claimant be ineligible to receive benefits because she restricted the hours she was available to work when her class schedule conflicted with the schedule the employer hired her to work?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 2, 2009. The employer hired the claimant to work as a part-time direct care giver, 20 to 21 hours a week. At her interview, the claimant told the employer she would be going to school and her work schedule would have to work around her school schedule. The claimant told the employer that school was her first priority. The employer scheduled the claimant to work a double shift and every other weekend. The double shifts were 3:00 to 9:00 p.m. or 1:00 to 9:00 p.m.

As a result of her class and school schedule, the claimant told the employer on May 16 that she could no longer do weekly double coverage work. The claimant still wanted to work every other weekend. The employer did not have just every-other-weekend work available at the house where the claimant worked. The employer transferred the claimant to another house so she could work every other weekend.

During the week of August 3, the claimant asked the employer for more work. At that time, the claimant could work a double coverage any day after 2:00 p.m. and she could work every other weekend. The claimant, however, told the employer she preferred to work one overnight and every other weekend. If the claimant worked overnight, she understood she would be considered a full-time employee. The employer did not have any overnight work available for the claimant in early August.

The claimant established a claim for benefits during the week of June 14, 2009. The claimant filed claims for the weeks ending June 20 through August 15, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not available to work when her availability is unduly limited and she is not willing to work during the hours in which suitable work is available. 871 IAC 24.23(16).

The facts show the employer hired the claimant to work 20 to 21 hours a week. Initially, the claimant worked double-coverage shifts and every other weekend. On May 16, the claimant requested no more double-coverage shifts because her school schedule restricted her availability to work those hours. The claimant did not contact the employer again about her availability until the week of August 3. At that time, the claimant was available to work double-coverage shifts, but she preferred an overnight and every-other-weekend shift. From May 16 through August 3, the claimant unduly restricted her availability to work the hours the employer initially hired her to work. As a result, the claimant is not eligible to receive benefits as of June 14, 2009, because of the restrictions she placed on the hours she was available to work.

The claimant is commended for going to school; but, to receive unemployment insurance benefits, she cannot restrict the hours she is available to work because of a school or class conflict and still receive unemployment insurance benefits. The claimant demonstrated she is available to work as of August 2, when she was again available to work double-coverage shifts.

If her future school schedule prevents her from working double-coverage shifts or every other weekend, the claimant would not be eligible to receive benefits, because of the restrictions she placed on her availability. Although the claimant prefers an overnight shift, she cannot hold out for an overnight shift, because this would again demonstrate that she is restricting her availability for work, which would make her ineligible to receive benefits.

Since the claimant received some benefits between June 14 and August 1, the issue of overpayment will be remanded to the Claims Section.

**DECISION:**

The representative's July 24, 2009 decision (reference 01) is modified in the claimant's favor. The claimant is not eligible to receive benefits from June 14 through Augusts 1, 2009, because she restricted her availability to work as a result of conflicts with her school schedule. As of August 2, 2009, the claimant is eligible to receive benefits because she was again available to work the hours the employer had hired her to work. An issue of overpayment for benefits the claimant received June 14 through August 1, 2009, is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw