

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANGELINA M INGLE
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO. 16A-UI-09375-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/22/16
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 18, 2016 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 14, 2016. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as security for employer at a college campus. During summers claimant is laid off from work, going in only when called by employer. Claimant has a special needs child that cannot be watched by just any babysitter, so it often takes a period of time to arrange for an appropriate babysitter to come. Claimant stated that she took the job as a first shift security guard as it was difficult to get particularized childcare for second shift jobs. Claimant also stated that she explained to employer at the time of hire that she did have a special needs child.

Earlier this summer claimant did work second shift hours. Claimant was given weeks of advance notice that she was requested to work those hours and she was able to get a babysitter to watch her children. Late in the summer claimant was asked to work second shift for a week. She declined to work as she was given only one day to get a babysitter to allow her to work and it couldn't be accomplished. At all other times claimant had been able and available to work her normal first shift hours, or to work second shift hours, if given adequate time to get a babysitter.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. 871-24.23(16) provides:

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.

Claimant was hired to work first shift by employer and has done so for multiple years. Claimant has additionally worked second shift for employer when given sufficient advanced notice to allow for necessary adjustments with claimant's family. In this matter, claimant was given less than a day's notice that she was being asked to work a shift different than her regular work shift. Benefits shall be allowed effective May 22, 2016.

This matter does not fit within the able and available limitations imposed in Iowa Admin. Code r. 871-24.23(16). Claimant's limits on hours were made known to employer prior to hire, and claimant was willing to work outside those hours as long as she was given more than a day's advance notice. As such, claimant is deemed to be able and available for work.

DECISION:

The decision of the representative dated August 18, 2016, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective May 22, 2016, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs