

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA M SIEMS
Claimant

APPEAL 18A-UI-06042-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/25/18
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 24, 2018, (reference 09) unemployment insurance decision that denied benefits based upon a determination that claimant was devoting time and efforts to becoming self-employed and therefore was not available for work. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2018. The claimant, Linda Siems, participated and was represented by Charles W. Showalter, Attorney at Law.

ISSUE:

Is the claimant able to work and available for work effective April 29, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last employed in a full-time position with Pizza Ranch of Mason City. Claimant's employment with this employer ended on February 28, 2018. From May 9 to June 5, 2018, claimant and a friend operated a flower market together. This flower market was open on Mondays through Thursdays from 2:00 p.m. to 6:00 p.m.; on Fridays from 2:00 p.m. to 5:00 p.m.; on Saturdays from noon to 5:00 p.m.; and on Sundays from noon to 4:00 p.m. Claimant and her friend had planned this business venture while claimant was still employed with Pizza Ranch. Claimant testified that this flower market would not have prevented her from accepting a full-time position if one was offered to her. Claimant explained that her friend and business partner is retired and could have managed the flower market if claimant needed to be at work or an appointment. Claimant was able to attend a job interview while the flower market was open. Claimant has been actively and earnestly seeking work since she filed for benefits. She has applied for food service work, retail work, office work, and landscaping work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work effective April 29, 2018. Benefits are allowed.

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. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(7) provides:

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.

In order to be eligible for benefits, an individual must be able to work, available for work, and actively and earnestly seeking work. While claimant operated a part-time temporary flower market with a friend, she remained committed to seeking full-time employment and was prepared to accept work if work was offered to her. Nothing about claimant's temporary flower market prevented her from looking for or accepting a full-time job. Claimant has established that she meets all the requirements of being able to and available for work. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The May 24, 2018, (reference 09) unemployment insurance decision is reversed. Claimant is able to work and available for work. Benefits are allowed, provided claimant is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn