

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JENNIFER C BYRNE  
2013 W 14TH ST  
SIOUX CITY IA 51103

CITY OF SIOUX CITY  
c/o ACCOUNTING & AUDIT DIVISION  
PO BOX 447  
SIOUX CITY IA 51102-0447

Appeal Number: 05A-UI-06329-S2T  
OC: 06/08/05 R: 01  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jennifer Byrne (claimant) appealed a representative's June 8, 2005, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was still employed with City of Sioux City (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2005. The claimant participated personally. The employer provided a telephone number for the Appeal hearing. The administrative law judge dialed the number at approximately 1:06 p.m. and received a recorded message. The administrative law judge left a message for the employer to telephone the Appeals Section immediately if it wished to participate in the hearing.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in August 2001 as a part-time clerical person. She consistently worked 32 to 38 hours per week. The employer reduced the claimant's hours in mid-May 2005 due to lack of work. The employer has not given the claimant any hours to work since May 18, 2005.

The record was closed at 1:16 p.m. on July 6, 2005. At 1:18 p.m. the employer called and requested to participate. At the time the employer provided its telephone number to the Appeal Section for the hearing it was told to notify the Appeals Section within five minutes if the employer did not receive a telephone call from the administrative law judge. The employer was involved in another matter at the time the hearing was proceeding.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The employer called the Appeals Section for the July 6, 2005, hearing was after the hearing had been closed. Although the employer intended to participate in the hearing, the employer failed to be available for the hearing. An intent must be accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the case of an appeal hearing, that overt act is to provide a telephone number where the party may be contacted. The employer did not do this and therefore has not established good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

The issue then becomes whether the claimant is disqualified for being unavailable for work. For the following reasons, the administrative law judge concludes she is not.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time worker and is not working part-time for the employer. The change in hours was initiated by the employer. The claimant is not employed in a part-time position as was agreed to at the time she was hired. The claimant is qualified to receive unemployment insurance benefits because she is available and available for work.

DECISION:

The representative's June 8, 2005 decision (reference 01) is reversed. The claimant is not disqualified from receiving unemployment insurance benefits. She is able and available for work.

bas/kjw