

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAETHA R PASSOW
Claimant

APPEAL NO. 08A-UI-10610-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**OC: 09/21/08 R: 02
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work
871 IAC 24.22(2)i(1) – On-call Worker

STATEMENT OF THE CASE:

Maetha Passow filed an appeal from a representative's decision dated October 31, 2008, reference 01, which held the claimant was not willing to work the number of hours required in her occupation, thus unduly limiting her availability for work. After due notice was issued, a telephone conference hearing was scheduled for and held on December 1, 2008. Ms. Passow participated personally. The employer participated by Megan Treiber, hearing representative, and witnesses Amy Hanson and Susan Simmson.

ISSUE:

The issue is whether the claimant was willing to work the number of hours required in her occupation or unduly limiting her availability for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer beginning on March 10, 2008, as a part-time sign preparation worker and was paid by the hour.

On September 21, 2008, the claimant limited her availability to work the part-time hours available for personal reasons. The claimant at that time requested to be placed on "on-call status." Because of the claimant's limitation on the working hours that she would accept, her availability for work in her employment with Sears Roebuck & Co. was substantially limited.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Passow was not willing to work the number of hours required by her occupation and thus was unduly limiting her availability for work. It does.

The evidence in the record establishes the claimant was hired to work on a part-time basis, working Sundays and an additional minimum of two days per week for Sears Roebuck & Co.

Based upon the claimant's personal request to be moved from part-time status to a "on-call status" as a substitute worker, the claimant was not available to accept the number of working hours that were otherwise available to her, unduly limiting her availability for work under the provisions of the Iowa Employment Security Act.

871 IAC 24.22(2)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

For the reasons stated herein, the administrative law judge concludes that the claimant unduly limited her number of working hours, thus limiting her availability for work.

DECISION:

The representative's decision dated October 31, 2008, reference 01, is affirmed. The claimant has not met the availability requirements of the law. Benefits are denied as of September 21, 2008.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw