

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL J NOVEY
Claimant

APPEAL NO. 11A-UI-02125-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 12/19/10
Claimant: Appellant (4)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the representative's decision dated February 21, 2011, reference 03, which denied unemployment insurance benefits effective December 19, 2010 finding the claimant was not available for work. After due notice, a telephone hearing was held on March 22, 2011. The claimant participated personally. Appearing as a witness for the employer was Nancy Voelker.

ISSUE:

At issue in this matter is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Carol Novey opened a claim for unemployment insurance benefits with an effective of December 19, 2010 and was issued the customary information that explains the unemployment compensation system and its requirements.

Ms. Novey had been previously been employed by Kelly Services and had last worked for Kelly on December 17, 2010. Ms. Novey indicated that she would not be available for work during the remainder of the month of December as she was going on "vacation." Ms. Novey did not contact perspective employers each week that she claimed benefits during the period of December 2010 and January 2011. On February 1, 2011 the claimant attended a fact finding and subsequently began to contact perspective employers each week that she claimed unemployment insurance benefits.

Ms. Novey has self-employment as a tax preparer. After February 1, 2011 the claimant primarily has engaged in her self-employment during evenings and weekends and has made herself available for immediate acceptance of employment during normal working hours.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant was able and available for work within the meaning of the Employment Security Law. Beginning December 19, 2010 she was not.

Iowa Code section 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".

The evidence in the record shows Ms. Novey made herself unavailable for work by indicating that she was going to be on vacation the last two weeks of December. During the period of December 2010 and January 2011 the claimant was not contacting perspective employers each week that she claimed unemployment insurance benefits. After February 1 the claimant began to actively seek work by contacting perspective employers each week that she claimed benefits. The claimant, effective February 2, 2011, focused on becoming re-employed and limited any self-employment activities to evenings and weekends so as to not affect her availability during the normal workweek.

Based upon the application of the facts to the law the administrative law judge concludes that the claimant was not available for work from December 19, 2010 until February 1, 2011. The claimant is not eligible to receive unemployment insurance benefits during that period. The claimant is eligible to receive unemployment insurance benefits effective February 1, 2011, providing that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 21, 2011, reference 03, is affirmed as modified. The claimant was not available for work from December 19, 2010 until February 1, 2011. The claimant was available for work thereafter and eligible for benefits providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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