

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L GALLERY
Claimant

APPEAL NO. 10A-UI-04972-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EVENT SERVICES INC
SPIELMAN'S EVENT SERVICES INC**
Employer

**OC: 02/15/10
Claimant: Appellant (1-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 10, 2010. Claimant participated. Employer participated through Troy Albaugh.

ISSUE:

The issue is whether claimant is able to and available for work effective May 10, 2009.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as an event planner until February 14, 2009 and was cut to part-time hours on Saturdays and after hours when her husband could care for their children and because of economic downsizing so she had to cut out on childcare and was not available for her regular part-time hours. She was unavailable for work in June due to her mother's illness and death in March and April 2009 and on June 15 her step-father had an accident at work and was admitted to a nursing home. On May 12 she offered to work from 8:00 a.m. to close on eight days in May and from then forward she declined due to daycare issues. She was separated from employment on June 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

871 IAC 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.

871 IAC 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.

Since claimant was unable to work due to lack of daycare, a personal responsibility, she is not considered available for work for the period at issue. Accordingly, benefits are denied.

DECISION:

The March 23, 2010 (reference 02) decision is affirmed. The claimant is not able to work and available for work effective February 15, 2010 through the date of separation. Benefits are denied.

REMAND: The separation issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css