

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VIETTA R SANCHEZ**  
Claimant

**APPEAL NO. 14A-UI-07637-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BODEANS BAKING HOLDING  
COMPANY LLC**  
Employer

**OC: 11/24/13  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the representative's decision dated July 23, 2014, reference 03, which denied unemployment insurance benefits as of June 29, 2014, finding that the claimant unduly limited her availability for work. After due notice was provided, a telephone hearing was held on August 18, 2014. The claimant participated. The employer participated by Mr. Jason Jauron, Human Resource Manager.

**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 the evidence in the record, finds: Vietta Sanchez began employment with Bodeans Baking Holding Company, LLC on August 14, 2012. Ms. Sanchez was hired to work as a part-time packer averaging approximately 24 hours of work per week. Ms. Sanchez was paid by the hour. The company's scheduler for part-time workers was Julie Bogenreis.

The employer's practice for scheduling part-time workers is to send the worker a voice or text message each week that work is available, to determine the employee's availability for scheduling. The part-time employee is then required to respond by either calling the company's scheduler or sending a text message to indicate their availability for work. If a part-time employee does not respond, the employer concludes that the worker is not available for scheduling and the working hours are given to other part-time workers.

For the weeks beginning Monday, June 23, 2014 and Monday, June 30, 2014, the employer's scheduler sent repeated messages to Ms. Sanchez to determine her availability for scheduling, but did not receive any responses from the claimant. Because the claimant had not responded

as required indicating her availability to be scheduled, the employer concluded that the claimant was not available and working hours were given to other employees.

It is the claimant's belief that she did not receive any messages inquiring about her availability for either week, although the claimant's cell phone was shut off approximately June 27, 2014. The claimant did not attempt to contact the company's scheduler during the two weeks in question and did not do so until the middle part of July 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements.

871 IAC 24.22(2) provides that to satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse.

In the case at hand, the evidence establishes that the employer has a regular practice of contacting part-time workers each week that work is available to determine their availability so that they can be scheduled to perform work for the company. The employer specifically questioned the company's scheduler and determined that repeated messages had been sent to Ms. Sanchez for the weeks beginning June 23 and June 30, 2014 for the purpose of obtaining her availability so that the claimant could be scheduled for work. Although these messages were sent in the regular format to the telephone number provided by the claimant, Ms. Sanchez asserts that she did not receive them.

The administrative law judge finds the preponderance of the evidence to be established in favor of the employer. The employer followed its regular and usual practice of contacting the claimant for work utilizing the cell phone number provided by Ms. Sanchez for these purposes. The company's scheduler was specifically questioned by the employer and asserted that the availability inquires that had been sent to the claimant in the usual course of business in the usual manner but that the claimant had not responded. The scheduler also indicated that repeated messages had been sent in an effort to contact Ms. Sanchez for scheduling. In contrast it is the claimant's position that she did not receive any calls or messages but did not consider that situation to be unusual. The evidence also indicates that the claimant's telephone was inoperable for a period of time when the cell phone's payment card had been exhausted.

For the reasons stated herein the administrative law judge finds that the preponderance of the evidence to be established in favor of the employer. The claimant has not met her burden of proof to establish that she was available for work. The claimant did not respond to the employer's usual methods of contacting her to establish her availability. Unemployment insurance benefits are withheld until the claimant's availability for work has been re-established.

**DECISION:**

The representative's decision dated July 23, 2014, reference 03, is affirmed. Benefits are denied effective June 29, 2014. The claimant unduly limited her availability for work and therefore has not met the availability requirements of the Iowa Employment Security Law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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