

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALYSIA M WEST**

Claimant

**APPEAL 20A-UI-01436-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABSOLUTE OUTDOOR SERVICES INC**

Employer

**OC: 01/12/20**

**Claimant: Respondent (2R)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.4(3) – Able and Available

871 IAC 24.23(26) – Same Hours and Wages

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

871 IAC 24.22(2)f – Eligibility Conditions

**STATEMENT OF THE CASE:**

Absolute outdoor Services (employer) appealed a representative's February 13, 2020, decision (reference 03) that concluded Alysia West (claimant) was eligible to receive unemployment insurance benefits as of November 22, 2019, after having been laid off due to lack of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Chad Williams, Owner.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 6, 2019, as a full-time bed maintenance technician. She worked part-time hours through November 22, 2019.

The claimant and the office manager/owner's wife had a text conversation near the end of the claimant's employment. The claimant sent a text saying, "Hi Angie. I'm wanting to know if I'm still on the schedule or if the season is over for me. I know there was a meeting and some group texts that I wasn't a part of and I know winter stuff is starting. So I guess I feel a little lost in the shuffle. I can't commit to doing snow removal this winter due to the crap I'm dealing with. I just can't be as reliable as you need me to be for that. If I'm done for the season, that's fine. I

just want to make sure that I want my job and I'd love for you to call me back in the start of the spring."

The employer responded, "Hey Alysia, sorry for the delay. At this point we are wrapping everything up for the season and are getting things in place for snow and the start of next season. We appreciate your help this season and will probably be needing help next summer. We will be in contact in the spring. Have a merry and safe holiday season. The claimant replied, "Thank you guys so much. See you in the spring." On or about February 24, 2020, the employer offered the claimant a position.

The claimant filed for unemployment insurance benefits with an effective date of January 12, 2020. She reported weekly claims for the two-week period ending January 25, 2020. The claimant received no unemployment insurance benefits after her separation from employment. The employer was mailed a notice of claim that was due on January 24, 2020. The employer signed a notice of claim on January 24, 2020. It certified that the claimant was still employed. The notice of claim was stamped as being postmarked on January 29, 2020. The claimant's weekly benefit amount was \$160.00.

#### **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 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".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Here the employer had work available for the claimant after November 22, 2019, but she chose to not "commit to doing snow removal". The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not appear for the hearing and provide evidence of availability for work as of November 22, 2019. Without proof of being able and available, the claimant is deemed to be ineligible for unemployment insurance benefits as of November 22, 2019.

The issue of the timeliness of the protest is remanded for determination.

**DECISION:**

The representative's February 13, 2020, decision (reference 03) is reversed. The claimant was not able and available for work for the week ending February 22, 2020. Benefits are denied.

The issue of the timeliness of the protest is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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