

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ESSENCE K EASON**  
Claimant

**FMS GROUP INC**  
Employer

**APPEAL 18A-UI-03523-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/11/18  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 8, 2018, (reference 04) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on April 11, 2018. Claimant participated with her mother Michelle Estes and sister Shae Estes, who is also her non-attorney representative. Employer participated through area supervisor Staci Pate and general manager Leigh Smith.

**ISSUES:**

Is the claimant able to work and available for work effective February 11, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a part-time crew member for Arby's. The employer does not guarantee a certain number of hours per week. Claimant has not been available to work nights or weekends because of limited bus operation hours. Both Michelle and Shae Estes can provide transportation after hours. The employer has not received a request for accommodation regarding claimant's employment. The employer closed the store and moved her from that location to work at another location on January 31, 2018. She did not call when Smith told her to call if she wanted more work. Claimant had wages from this employer of \$1647 in the first quarter of 2017, \$1579 in the second quarter of 2017, \$1815 in the third quarter of 2017, \$1511 in the fourth quarter of 2017, \$1296 in the fourth quarter of 2016. Her average weekly wage (AWW) is \$139.66. She is paid \$8.75 per hour. That indicates she worked an average of 15.96 hours per week. The wages for the first quarter of 2018 are not available, but claimant did report wages for six weeks:

**PAYMENT-RECORDS..**

**BWE-DATE AMT-RP**

02/17/18	26.00
02/24/18	43.00
03/03/18	52.00
03/10/18	122.00
03/17/18	70.00
03/24/18	184.00

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not available for work during the five weeks-ending March 17, 2018.

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 Admin. Code r. 871-24.22(2) 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.

**(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.

Iowa Admin. Code r. 871-24.23(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.

Iowa Admin. Code r. 871-24.22(2)f 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.

*f. Part-time worker, student--other.* Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If

such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Clearly, claimant did not receive her average of 16 hours per week or \$140.00 in wages per week for five of the six weeks. Further, the limitation of hours was also due to claimant's representation to the employer (and the fact-finding interviewer) about her limited transportation, and failure to call for extra hours upon Smith's invitation. Whether due to lack of hours or lack of communication between the parties, she was not available for work during the five weeks-ending March 17, 2018. However, if the employer is aware of claimant's sheltered work ability, it would be reasonable to open communication to her direct support provider. Likewise, it is claimant's direct support provider's responsibility to enable communication with the employer and ask for accommodation if desired. The limitation of hours was triggered in part by the store closing and transition, but also by claimant's stated unavailability for night and weekend hours. Accordingly, she may not be considered available for work as she was during her base period. Although according to base period average wages she would be considered available for work the week-ending March 24, 2018, she earned more than her regular wages and would not be qualified on that basis.

**DECISION:**

The March 8, 2018, (reference 04) unemployment insurance decision is affirmed. The claimant was not available for work during the five weeks-ending March 17, 2018, so benefits are denied. She was available the week-ending March 24, 2018, but her wages exceeded benefit eligibility.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs