

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAUREN S MOSER
Claimant

APPEAL NO. 11A-UI-03979-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 11/22/09
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the representative's decision dated March 14, 2011, reference 05, which denied benefits effective May 9, 2010 finding that the claimant was not available for work. After due notice, a telephone hearing was held on April 20, 2011. The claimant participated personally. The employer participated by Ms. Jennifer Star, Account Manager.

ISSUE:

At issue in this matter is whether the claimant was 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: Lauren Moser was employed most recently by Temp Associates on March 24, 2010. The claimant was assigned to work as a mail sorter at the Metro Group Company. On May 9, 2010, Temp Associates offered Ms. Moser the same type of assignment at the Metro Group Company. The claimant did not accept the offer when it was made due to plans by the claimant's family to travel/move to the state of Missouri. When the claimant did not accept the offer of the assignment, another individual was placed in the assignment. After remaining in the state of Missouri for approximately two weeks the claimant returned to Mount Pleasant, Iowa, but did not contact Temp Associates for additional assignments until October 4, 2010.

It is the claimant's position that she did not refuse the offer on May 9, 2010 but delayed accepting the offer until she received approval from her husband. It is the claimant's further position that she did not remain in the state of Missouri more than approximately two weeks before returning to the Mount Pleasant area, and that she engaged in looking for work while in Missouri. The record does not establish that Ms. Moser contacted the state of Missouri's employment security agency to file a courtesy claim for benefits while away from the state of Iowa.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Lauren Moser was available for work beginning May 9, 2010.

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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the claimant 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 as follows: 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. That is, the individual must be genuinely attached to the labor market. Since, under employment 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. The labor market for an individual means the market for the type of service which the individual offers in the geographic 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 a lack of job vacancies. It means only the type of service which the individual was offering is generally performed in a geographic area in which the individual is offering the services.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes Lauren Moser was not available for employment beginning May 9, 2010 and therefore is not eligible for benefits. The claimant did not accept an offer of work of the type and nature that she had previously had and the evidence establishes that the claimant temporarily left the geographic area, the claimant did not respond to repeated calls by Temp Associates for perspective job assignments and that the claimant did not re-contact the temporary employer for approximately four months after most recently refusing a job offer with that company.

DECISION:

The Agency representative's decision dated March 14, 2011, reference 05, is affirmed. The claimant was not available for work beginning May 9, 2010 until she contacted the Iowa Workforce Development offices and established her availability for work.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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