

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY A LORENTZEN
Claimant

APPEAL NO: 18A-UI-08211-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 05/13/18
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 30, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 22, 2018. The claimant participated in the hearing. Teah Shirk, Employment Coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time temporary forklift operator at Seventh Avenue, Inc. June 3, 2014, and is still employed there. In January 2018, she requested May 28 through August 3, 2018, off work and the employer granted her request. In June 2018, the claimant's supervisor asked her if she could work Mondays beginning July 2, 2018, and the claimant agreed. The claimant opened a new claim for unemployment benefits effective May 13, 2018.

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".

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant requested the summer off work and the employer granted her request effective May 28, 2018. She chose to be off work. She cannot then collect unemployment insurance benefits. The situation is similar to a leave of absence, which is a period of voluntary unemployment. While the claimant is willing to work Mondays, she is not working the major portion of the scheduled workweek for her regular employer. Accordingly, the claimant is not considered able and available for work and benefits must be denied.

DECISION:

The July 30, 2018, reference 02, decision is affirmed. The claimant is not able to work and available for work effective July 1, 2018.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn