

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COLLEEN M FREESE**  
Claimant

**APPEAL NO. 08A-UI-03505-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMBINED INSURANCE**  
Employer

**OC: 03/25/07 R: 03**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work  
Section 96.19-38 – Still Employed

**STATEMENT OF THE CASE:**

Colleen Freese filed an appeal from a representative's decision dated April 1, 2008, reference 05, which denied benefits finding the claimant did not meet the availability requirements of law as she was working enough hours to be considered employed. After due notice was issued, a hearing was held by telephone on April 23, 2008. Ms. Freese participated personally. Although notified there was no participation by the employer.

**ISSUE:**

At issue in this matter is whether the claimant is still employed and whether the claimant is able and available for work within the meaning of the Iowa Employment Security Act.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant began employment with Combined Insurance on January 21, 2008 and continues to be employed on a full-time basis as a sales person at the time of hearing. Ms. Freese was paid a base salary plus commission for her first seven weeks of employment. After that date the claimant was paid by commission only.

Based upon her earnings as a commission sales person Ms. Freese felt that she was eligible to receive unemployment insurance benefits and made an inquiry with respect to filing a claim. Based upon her full-time employment as a sales person with Combined Insurance the claimant was held not to be able and available for work because she was working sufficient hours to be considered to be employed by Combined Insurance. Ms. Freese is expected by the company to work full time and does so. During moments that she is not performing services for the insurance company the claimant scans on-line positions that may be available and looks for employment positions while she is performing services for the insurance company on making sales.

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

The question before the administrative law judge is whether the evidence establishes that the claimant's performance of services for Combined Insurance limits the claimant's availability for work based upon the number of hours and duties performed for her employer. It does.

The evidence in the record establishes that although Ms. Freese may be potentially eligible to receive unemployment insurance benefits based upon the amount of earnings that she receives from Combined Insurance, the evidence establishes that the claimant is, in fact, employed full time performing services for Combined Insurance. The claimant is expected to contact prospective clients by phone, make cold calls, complete reports and apply her endeavors for the benefit of Combined Insurance on a full-time basis beginning January 21, 2008. The claimant continues to be employed in this capacity at the time of hearing.

871 IAC 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.

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Although the administrative law judge is aware that the claimant is attempting to find new permanent work during times that she is not busy with her duties with Combined Insurance, the evidence in the record nevertheless establishes that the claimant continues to be employed full time and is not immediately available to accept new employment. The claimant's full-time employment substantially limits her availability for new work based upon the number of hours that she is required to perform services for Combined Insurance each week. The amount of work required of the claimant in her full-time work capacity is to a degree that removes the claimant from the labor market within the meaning of 871 IAC 24.23(23). It must therefore be held that the claimant is not available for work within the meaning of the Iowa Employment Security Act.

## **DECISION:**

The representative's decision dated April 1, 2008, reference 05, is hereby affirmed. Benefits are denied as of February 4, 2008. The claimant does not meet the availability requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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