

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET K SHARP
Claimant

APPEAL NO. 08A-UI-07044-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL COLLEGE
Employer

OC: 07/06/08 R: 02
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Janet Sharp filed an appeal from a representative's decision dated July 31, 2008, reference 01, which denied benefits between July 6, 2008 and July 12, 2008 finding the claimant was unable to work for the major portion of the workweek because of personal reasons and obligations. After due notice was issued, a hearing was held by telephone on August 27, 2008. Ms. Sharp participated personally. The employer participated by Betty Buitenwerf and Tony Bethards.

ISSUE:

At issue in this matter is whether the claimant was able and available for work for the major portion of the workweek between July 6, 2008 and July 12, 2008.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed as a catering coordinator for Central College working on a full-time basis and was paid by the hour.

Ms. Sharp filed a claim for unemployment insurance benefits effective July 6, 2008 after she noted that she had not been scheduled for work for the period between July 6, 2008 and July 12, 2008. The claimant had not been scheduled to work the majority of the preceding workweek and had not elected to take vacation time or PTO time although it was available to her, but its use was not mandatory. The claimant desired to reserve PTO or vacation time for later use when she had planned to use the time for family purposes.

After filing her claim the claimant was contacted by her immediate supervisor on July 6, 2008 and at that time the supervisor indicated that vacation or PTO time was available to Ms. Sharp and the claimant explained her reasons for not electing to use vacation time during the period when no work was available to her with this employer. An attempt was made to dissuade the claimant from claiming unemployment insurance benefits that week, the claimant's work was criticized and the claimant believes that inappropriate language was directed to her by her supervisor. Because the claimant had already filed a claim for benefits and had not been previously scheduled she declined an offer of work that week that was made at the end of a

conversation by her supervisor based upon her supervisor's demeanor and the apparent short notice given by her supervisor rescheduling work for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Sharp was able and available for work during the week of July 6 through July 12, 2008. It does.

In this case the evidence in the record establishes that the claimant's supervisor offered the claimant work on short notice only because the claimant had filed a claim for unemployment insurance benefits and contended that she had not been properly treated by the employer. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable that her supervisor became angry during the conversation and only made the offer of available work on short notice after the claimant refused to take vacation or PTO time that she was saving for other pre-planned purposes. The claimant is also credible in her testimony that her supervisor became upset and used inappropriate language prior to making the offer of work for the week in question.

Based upon the totality of the circumstances in this case, the administrative law judge concludes that the claimant was not provided reasonable notice or given a legitimate work offer for the period between July 6 and July 12, 2008. The employer caused the claimant's lack of work by not placing the claimant on the schedule or giving the claimant a prior notice of a layoff. The administrative law judge finds that the offer of work was not a legitimate offer of work but that it was only made in an angry response to the claimant's filing for unemployment insurance benefits and her refusal to use vacation time.

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".

For the reasons stated herein the administrative law judge concludes the claimant was able and available for work during the period in question. The claimant had not unduly restricted herself because of personal reasons or obligations for that week and had not been provided reasonable notice of available work for the week in question.

DECISION:

The representative's decision dated July 31, 2008, reference 01, is hereby reversed. The claimant is able and available for work and eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law for the week in question.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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