

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOUANN M MCPEAK
Claimant

APPEAL 22A-UI-06421-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/23/22
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Louann M McPeak, filed an appeal from the March 8, 2022, (reference 01) unemployment insurance decision that denied benefits effective March 6, 2022 based upon the conclusion she was unduly limiting her availability for work. The parties were properly notified of the hearing. A telephone hearing was held on April 21, 2022. The claimant participated. Official notice was taken of the agency records. The administrative law judge also took official notice of Google Maps location data. No exhibits were received into the record.

ISSUES:

Was the claimant exempt from work searches for the week of March 6, 2022 because she was temporarily unemployed?

Whether the claimant was able and available for work effective March 6, 2022?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for benefits effective January 23, 2022. The claimant was unemployed at that time due to a seasonal layoff at McPeak Trenching Incorporated. The claimant is the general manager and partial owner for McPeak Trenching Incorporated. She has performed accounting work, general maintenance and other tasks assigned over the course of her career.

The claimant's residence is six to eight blocks from McPeak Trenching Incorporated. The claimant does not have a driver's license or a vehicle. Instead, the claimant commutes to work in a battery powered golf cart. The claimant is able to commute to McPeak Trenching Incorporated during most of the year with the golf cart because Lu Verne, Iowa is a small town with minimal traffic.

The administrative record KCCO shows the claimant made weekly claims for the weeks ending January 29, 2022, February 5, 2022, February 12, 2022, February 19, 2022, February 26, 2022

and March 5, 2022. The claimant did not search for work during any of the weeks she made weekly claims. The claimant explained that Lu Verne is a small town and when McPeak Trenching Incorporated is closed, there are not any jobs that she can perform in town. She added that her golf cart is not able to commute to towns in the surrounding area. Humboldt and Clarion, Iowa are within a 35-minute drive from Lu Verne, Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for the period in question.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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". [Emphasis added]

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits 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. [Emphasis added]

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed "temporarily unemployed" if for a period, verified by the department, **not to exceed four consecutive weeks**, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. [Emphasis added]

Iowa Admin. Code r. 871-24.23 (18) and (20) provides:

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

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The claimant contends she was not required to be able and available for work. The claimant is correct that if she was temporarily unemployed, she is exempt from the requirement of being able and available for work. See Iowa Code section 96.4(3)a (stating that the requirement is waived if the employee is temporarily or partially unemployed as defined by Iowa Code section 96.1A(37)).

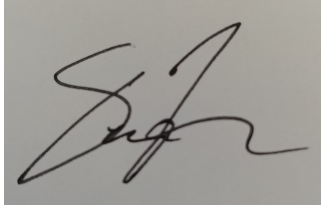
The claimant became temporarily unemployed on January 23, 2022 due to a seasonal layoff. Iowa Code section 96.1A(37) states a claimant cannot be temporarily unemployed for more than four consecutive weeks. In that context, the claimant was required to be able and available for work effective February 26, 2022.

The claimant was not able and available for work effective March 6, 2022 because she was not seeking work. She was holding out to be recalled by McPeak Trenching Incorporated. This is disqualifying under Iowa Admin. Code r. 871-24.23 (20). The claimant contends that there not enough jobs in Lu Verne for her to find work she performed over the course of her career. The administrative law judge believes the reasonable labor market in which she should be searching according to Iowa Admin. Code r. 871-24.22(2) includes the surrounding towns of Humboldt and

Algona. The claimant is not attached to the labor market because she does not have reliable transportation to commute 35 minutes to these surrounding areas. Benefits are denied.

DECISION:

The March 8, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective March 6, 2022.



Sean M. Nelson
Administrative Law Judge
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April 26, 2022
Decision Dated and Mailed

smn/kmj