

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAMIE Y DONELSON**  
Claimant

**APPEAL NO. 09A-UI-00553-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TLC STAFFING INC**  
Employer

**OC: 11/09/08 R: 04**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work  
871 IAC 24.23(4) – Transportation Availability

**STATEMENT OF THE CASE:**

Mamie Donelson filed an appeal from a representative's decision dated January 8, 2009, reference 01, that denied benefits effective November 9, 2008, finding the claimant's lack of transportation unduly limited her availability for work. After due notice was issued, a hearing was held by telephone on January 29, 2009. Ms. Donelson participated personally. The employer participated by Kurt Lehmkuhl, owner.

**ISSUE:**

The issue is whether the claimant's lack of personal transportation unduly limits her availability for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: Ms. Donelson opened a claim for unemployment insurance benefits effective November 9, 2008. The claimant normally works for temporary employment services. Her last assignment through TLC Staffing was on November 16, 2008, when she worked a one-day assignment as a certified nursing assistant at Ridgecrest Village. Ms. Donelson does not have personal transportation. The claimant utilizes public transportation and family members to drive her to job assignments in the Quad City area. Ms. Donelson has experienced no difficulty in securing transportation to job assignments in the geographic area encompassed by the Quad Cities. The claimant did not indicate at the time of hire that she was willing to accept assignments out of town. The claimant regularly contacts TLC Staffing for assignments. On some occasions, it appears that TLC Staffing has attempted to contact Ms. Donelson but that the claimant has been unaware of the attempts.

Ms. Donelson did not accept an offer of an assignment in Maquoketa, Iowa, as the assignment location was approximately 30 miles from the Quad City area. Public transportation does not run to that area and the claimant believed that she would have experienced difficulty in securing other transportation to a job location that far removed from the Quad Cities.

It is the employer's position that they cannot control where client employers may need temporary workers and that the company does not guarantee hours or work locations.

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

The question is whether the evidence in the record establishes that Ms. Donelson's lack of personal transportation unduly limits her availability for work. It does not.

The evidence in the record establishes that the claimant has accepted employment and temporary assignments at various locations within the Quad City area and actively and earnestly seeks employment. The evidence establishes that Ms. Donelson utilizes public transportation as well as family members to provide transportation to job assignments, provided that the assignments are within the general geographic area of the Quad Cities.

Ms. Donelson declined a temporary assignment in Maquoketa, Iowa, as public transportation was not available and the distance was too far to rely upon others to provide transportation to a location approximately 30 miles from the Quad City area. Although the claimant clearly indicated the reasons for her decline to the temporary employment service, for reasons that are unknown, the service continued to offer the claimant Maquoketa assignments, although they knew in advance that she would be unable to accept them. The claimant did not indicate at the time of accepting employment with TLC Staffing that she would work out of town.

The administrative law judge finds, based upon the evidence in the record, that Ms. Donelson has not lost the means of transportation to the areas of her usual employment, in the Quad Cities. The claimant has usually and regularly accepted employment in the Quad City area and has not restricted employability from that area. Based upon the evidence in the record, the administrative law judge concludes that the claimant's lack of personal transportation has not unduly limited her availability for work.

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".

871 IAC 24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not

be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

**DECISION:**

The representative's decision dated January 8, 2009, reference 01, is reversed. The claimant is able and available for work effective November 9, 2008. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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