

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CASSI L BAINTER-PETTORINI**  
Claimant

**APPEAL NO. 14A-UI-10732-GT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 09/08/13  
Claimant: Appellant (2)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 9, 2014, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on November 5, 2014. Claimant participated personally.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant used her smart phone to enter her weekly claim for her August 31, 2014 reporting date. She mistakenly pushed the wrong button when reporting for that week and did not notice it until she received a notice from the department. She was able and available for work at that time and she made her required work searches during that period.

**REASONING AND CONCLUSIONS OF LAW:**

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".

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant was able to and available for work. She made an honest mistake entering her information when reporting to the department. Benefits shall be allowed effective August 31, 2014.

**DECISION:**

The decision of the representative dated October 9, 2014, reference 05, is reversed. Claimant is eligible to receive unemployment insurance benefits effective August 31, 2014, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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