

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANNE M MULLEN
Claimant

JAY AMBAMA INC
Employer

APPEAL 16A-UI-13749-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/27/16
Claimant: Respondent (1R)**

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 employer filed an appeal from the December 21, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2017. The claimant participated personally. The employer participated through Nash Patel. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective November 27, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has performed work as a housekeeper for this employer since 2001. Her rate of pay is \$7.25, and her hours have varied depending on hotel occupancy. In summer 2016, the claimant was working seven days a week, and in August or September, asked her manager, Sonny Patel, if she could have one or two days off per week. He agreed and hired another housekeeper.

The claimant continued to work consistent hours until November 2016, when she was offered 4 hours over a two week period. Since November 2016, the claimant has not received any hours, and the employer has two additional housekeepers on staff. The claimant was not told she had been separated but rather than there is no work available at this time for her. The undisputed evidence is that the claimant is laid off due to a lack of work. There is no expected return to work date. During the claimant's employment history of sixteen years, she has experienced reduced work weeks but never has received zero hours of work per week. The claimant has not restricted her availability or shifts to perform work, and has no other limitations to employment.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work for the period in question. Benefits are allowed.

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".

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.

Based on the credible evidence presented, the claimant is working all available hours for this employer. She has been laid off of work from this employer since November 2016, with no expected return to work date. She has not restricted her availability to perform work, and has no other restrictions to employment.

REMAND: The issues of whether the claimant has been temporarily or permanently laid off, and whether she must begin a work search as delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The December 21, 2016, (reference 01) unemployment is affirmed. The claimant is able to and available for work effective November 26, 2016 and is currently unemployed due to a lack of work. **REMAND:** The issues of whether the claimant has been temporarily or permanently laid off, and whether she must begin a work search as delineated in the findings of fact are

remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs