

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KAY L WADE**  
Claimant

**TEMP ASSOCIATES-IOWA INC**  
Employer

**APPEAL 22A-UI-06069-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 02/06/22**  
**Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from the March 3, 2022 (reference 01) unemployment insurance decision that allowed benefits finding claimant was able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on April 19, 2022. Claimant did not participate. Employer participated through Sue Watkins, Branch Manager. No exhibits were admitted. Official notice was taken of the administrative record

**ISSUE:**

Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

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

Claimant was employed by Temp Associates-Iowa, a temporary employment firm, from October 20, 2021 until her sole assignment as a part-time, Covid-19 Health Screener at Nestle Purina ended on February 10, 2022. When claimant began her assignment, she worked more than one hour per day. Eventually, claimant informed employer that she could only work one hour per day due to her health.

During the week of February 6, 2022 through February 12, 2022, claimant worked one hour each day Monday through Thursday. Claimant asked employer to be removed from the assignment because she was having surgery and would decide whether she wanted to pick up hours going forward. Claimant performed no work on February 11, 2022. Claimant filed an initial claim for unemployment insurance benefits effective February 6, 2022.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

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 96.1A, 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".

Iowa Admin. Code r. 871-24.22(1), (2) provide in pertinent part:

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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

Iowa Admin. Code r. 871-24.23(1), (17), (26), (29) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant unilaterally reduced her work hours to one hour per day due to her health prior to filing her initial claim and stopped working entirely effective February 11, 2022 due to an upcoming surgery. Claimant has not established that she is able to and available for work. Benefits are denied effective February 6, 2022.

**DECISION:**

The March 3, 2022 (reference 01) unemployment insurance decision is amended in favor of appellant. Claimant is not able to and available for work effective February 6, 2022. Benefits are denied effective February 6, 2022.



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April 22, 2022  
Decision Dated and Mailed

acw/ACW