

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLI I MELTON**

Claimant

**APPEAL NO. 10A-UI-07210-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"MITCHELL ENDEAVORS LLC**

**"COMFORT KEEPERS**

Employer

**OC: 04/11/10**

**Claimant: Respondent (2)**

Section 96.5-3 – Refusal of Suitable Work

Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Mitchell Endeavors LLC filed a timely appeal from a representative's decision dated May 13, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits upon a finding the claimant did not accept an offer of work on April 13, 2010 because the job offer did not provide 100 percent of the claimant's average weekly wage. After due notice a telephone hearing was held on July 2, 2010. Although duly notified the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Robin Peterson.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable work and whether the claimant has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Kelli Melton was employed by Mitchell Endeavors LLC d/b/a Comfort Keepers from August 13, 2008 until May 10, 2010 when the employment relationship ended. Ms. Melton worked as an on-call home care giver and was recently paid \$9.40 per hour.

At the time of hire Ms. Melton indicated that she was willing to work 30 to 40 hours per week. The claimant, however, limited the number of hours that she was available to accept because of other personal commitments such as taking CNA classes, etc. After the claimant had completed her CNA classes in approximately of January 2010, Comfort Keepers again offered Ms. Melton additional working hours, however, the claimant routinely refused available working hours citing reasons such as transportation problems.

On April 12 and 13, 2010, Comfort Keepers offered Ms. Melton an additional 17 hours of work each week at her normal rate of pay of \$9.40 per hour. Ms. Melton for reasons that are unknown, declined 14 of the additional hours offered accepting only 3 additional hours per

week. Claimant at that time was then working 15.58 hours per week although she was aware and had been offered the additional 14 hours of work.

Other factors such as the claimant's failure to report for scheduled assignments and her subsequent separation from employment are not relevant to the issue under appeal at this time.

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

The administrative law judge concludes based upon the evidence in the record that the claimant is not able and available for work as required by the provisions of the Iowa Employment Security Act. The evidence in the record establishes that the claimant has held herself not available to take additional working hours offered by this employer. The offers were for the same type of work that the claimant had accepted when she was hired and at the same rate of pay. Most recently the claimant was offered 17 additional hours of work each week. These offers were made on April 12 and 13, 2010. Ms. Melton did not make herself available to accept 14 of the additional 17 hours of work offered.

871 IAC 24.22(2)c 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

The administrative law judge concludes based upon the evidence in the record that the claimant was not able and available for work as she unduly limited herself from making herself available for work of the regular type and nature that she had previously accepted with this employer. The claimant is ineligible to receive unemployment insurance benefits until such time as the claimant makes herself available for work. Claimant is not eligible to receive unemployment insurance benefits effective April 11, 2010 based upon her failure to make herself available for regular employment in her occupational field.

**DECISION:**

The representative's decision dated May 13, 2010, reference 01, is reversed. The claimant is ineligible to receive unemployment insurance benefits effective April 11, 2010 and thereafter until she has made herself available for work. Claimant has unduly limited her availability for work and thus is ineligible to receive unemployment insurance benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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