

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL KENYON
Claimant

APPEAL NO. 10A-UI-14507-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMMUNITY SCH DIST
Employer

OC: 08/22/10
Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.23(16, 17) – Willing to Work Available Hours

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 12, 2010, reference 02, that held she did not meet the availability requirements of the law and that denied benefits. A telephone hearing was held on December 7, 2010. The claimant participated. Stephanie Krause, HR Specialist, participated for the employer.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time teacher associate, 32.5 hours a week, Monday through Friday, beginning January 4, 2010. The claimant completed the school term on June 11, 2010. The claimant received an employer notice dated July 21, 2010 that, due to funding limitations, she would not be offered the teacher associate position for the next school term beginning August 23. The department issued a decision dated November 5, 2010, reference 03, that held due to too short of notice, the claimant was allowed benefits effective August 22. The employer did not appeal.

The claimant accepted an on-call, teacher substitute position with the employer for the fall school term. The claimant began receiving sufficient employer work, up to three days a week, that she ceased claiming for benefits the week ending September 18 (she received no benefit this week due to excessive wages), and the last week she received a benefit was the week ending September 11.

REASONING AND CONCLUSIONS OF LAW:

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The administrative law judge concludes that the claimant did not begin working sufficient hours to make her unavailable for work until the week ending September 18, 2010.

The claimant received a favorable department decision that the employer did not appeal regarding the issue of reasonable assurance because of the notification in July she would not be offered a teacher associate position for the subsequent school term beginning August 23.

The claimant filed for and received benefits through the week ending September 11, and received no benefit the week ending September 18, because she earned excessive wages from the employer doing substitute teaching. The availability disqualification should not begin until September 12, because this is when the claimant is doing enough substitute teaching work and earnings sufficient wages that disqualifies her from receiving unemployment. The claimant realized this circumstance and stopped claiming for benefits. The claimant did not perform enough work for the (weeks) period ending September 11 as a substitute teacher and was able and available for work during this time.

DECISION:

The department decision dated October 12, 2010, reference 02, is modified. The claimant does meet the availability requirements of being able and available for work from the effective date of her claim through the week ending September 11, 2010, and no benefit disqualification is imposed. The claimant does not meet the able and available requirements beginning September 12, due to performing sufficient work and having substantial earnings that she is disqualified.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw