

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARICELA BRAVO**  
Claimant

**STORM LAKE COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 17A-UI-06000-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/12/16**  
**Claimant: Respondent (1-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 8, 2017, (reference 04) unemployment insurance decision that allowed benefits beginning May 21, 2017. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2017. Claimant did not participate. Employer participated through business manager Trudy Pedersen and superintendent Carl Turner. Administrative Assistant Marianne Sustache registered for the hearing on behalf of the employer, but she did not participate. Employer Exhibits One, Two, and Three were admitted into evidence with no objection. Department Exhibit D-1 was admitted into evidence with no objection. Official notice was taken of the administrative record, with no objection.

**ISSUE:**

Is the claimant able to work and available for work effective May 21, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a custodian starting January 12, 2016. Claimant was a year round employee and on May 23, 2016, she signed a custodian work agreement of employment to work from July 1, 2016 through June 30, 2017. Employer Exhibit Three. In June 2016, claimant requested to have some time off during the summer of 2016 to go to Mexico. The employer agreed to claimant taking a leave of absence during the summer of 2016. The employer expected claimant to return to work the first part of August 2016. Claimant did not return to work for the employer the first part of August 2016. On August 8, 2016, Mr. Turner called claimant and asked if she was returning to work for the employer. Employer Exhibit One. Claimant had returned from Mexico. Claimant told Mr. Turner she was not returning to work for the employer and that she was resigning her position. Employer Exhibit One. The employer accepted claimant's resignation. Employer Exhibit Two. Mr. Turner believes claimant was working for another employer sometime after August 8, 2016. On August 8, 2016, the employer had work available for claimant.

The administrative record reflects that claimant is able and available for work as of May 21, 2017. The administrative record reflects that "Maricela was on a leave of absence when she

was employed at Storm Lake Community Schools and was disqualified for benefits. Maricela is now employed with Lunchtime Solutions and she is able and available for work but there is no work for her as she is laid off for the summer.” Department Exhibit D-1. The employer has not had any contact with claimant since August 8, 2016. The employer did not have any information on whether claimant is able to work and available for work effective May 21, 2017.

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

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work effective May 21, 2017.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

**Benefit 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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. According to the administrative record and Department Exhibit D-1, claimant is able to work and available to work as of May 21, 2017. Accordingly, benefits are allowed effective May 21, 2017.

**DECISION:**

The June 8, 2017, (reference 04) unemployment insurance decision is affirmed. Claimant is able to work and available for work effective May 21, 2017. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:** The separation issue from this employer and whether claimant was able and available for work as of the separation date from this employer as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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