

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M BREITBACH
Claimant

APPEAL NO. 14A-UI-07552-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/04/14
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Michelle Breitbach filed a timely appeal from the July 21, 2014, reference 02, decision that denied benefits effective June 15, 2014; based on an Agency conclusion that Ms. Breitbach was unavailable for work due to a loss of transportation. After due notice was issued, a hearing was held on November 7, 2014. Ms. Breitbach participated. Brandy Whittenbaugh represented the employer. The hearing in this matter was consolidated with the hearing in Appeal No. 14A-UI-07551-JTT. The administrative law judge took official notice of the agency's administrative record of the period for which the claimant's claim was active (DBRO) and the claimant's use of the internet to make weekly claims during that period (KCCO).

ISSUE:

Whether the claimant was available for work within the meaning of the law during the six-week period of June 15, 2014 through July 26, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Breitbach established an additional claim for benefits that was deemed effective Sunday, June 15, 2014. Ms. Breitbach made the application for benefits in Saturday, June 21, 2014. At the time Ms. Breitbach established the additional claim, she was without reliable transportation. Ms. Breitbach's car needed a new battery and would not function unless Ms. Breitbach charged it overnight. Ms. Breitbach's car needed new tires. The starter in Ms. Breitbach's car was not functioning properly. Ms. Breitbach did not again have reliable transportation until July 13, 2014 when she was able to borrow a car from her brother.

Ms. Breitbach's claim for benefits was active during the six-week period of June 15, 2014 through July 26, 2014. During the first week of the claim, the week that ended June 21, 2014, Ms. Breitbach did not search for work. During the weeks that ended June 28, July 5, July 12, July 19 and July 26, 2014; Ms. Breitbach made at least two employer contacts.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

Ms. Breitbart did not meet the availability requirement during the four-week period of June 15, 2014 through July 12, 2014 because she lacked transportation to and from potential employment. Ms. Breitbart is not eligible for benefits for those weeks when she did not meet the availability requirement. Effective July 13, 2014 Ms. Breitbart had reliable transportation by means of the vehicle she had borrowed from her brother. Ms. Breitbart met the availability requirement during the two-week period of July 13, 2014 through July 26, 2014 and is eligible for benefits for those two weeks, provided she meets all other eligibility requirements.

DECISION:

The July 21, 2014, reference 02, decision is modified as follows. The claimant did not meet the availability requirement during the four-week period of June 15, 2014 through July 12, 2014 because she lacked transportation to and from potential employment and not eligible for benefits for those weeks. The claimant had reliable transportation and met the availability requirement during the two-week period of July 13, 2014 through July 26, 2014. The claimant is eligible for benefits for those two weeks, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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