

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELBIE MERCHANT

Claimant

APPEAL 21A-UI-14904-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

POINT AFTER INC

Employer

OC: 03/14/21

Claimant: Appellant (1)

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:

Claimant filed an appeal from the June 22, 2021 (reference 01) unemployment insurance decision that denied benefits effective March 14, 2021 because claimant was not willing to work the hours required in her occupation. The parties were properly notified of the hearing. A telephone hearing was held on October 13, 2021. Claimant participated. Employer participated. Claimant's Exhibits A – UU were admitted. Employer's Exhibit 1 was 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 as a part-time Server and Bartender with Point After, Inc. from November 21, 2016 until her employment ended July 7, 2021. Claimant filed an initial claim for unemployment insurance benefits effective March 14, 2021 and ongoing weekly claims from March 14, 2021 through May 29, 2021.

During the time in question, claimant was scheduled to work Wednesdays and Thursdays at employer's Point After location and Saturdays and Sundays at employer's End Zone location. Claimant did not work all of her scheduled shifts. Based upon time cards from employer's End Zone location, claimant worked eight of her 22 scheduled Saturday and Sunday shifts; claimant did not work 14 of her scheduled shifts. (Employer's Exhibit 1, p. 4) Claimant did pick up other shifts on occasion. (See Claimant's Exhibits A – UU)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work. Benefits are denied.

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

Employer scheduled claimant to work her regular hours. Claimant did not to work all of her scheduled shifts. Claimant was not available to work her regular hours. Claimant has not established that she was able to and available for work and, thus, is not eligible for unemployment insurance benefits. Accordingly, benefits are denied.

DECISION:

The June 22, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work. Benefits are denied effective March 14, 2021.



Adrienne C. Williamson
Administrative Law Judge
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October 26, 2021
Decision Dated and Mailed

acw/scn