

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRAINE J MULLEN

Claimant

APPEAL NO. 10A-UI-14743-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES CITY

COMMUNITY SCHOOL DISTRICT

Employer

OC: 09/26/10

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 22, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 16, 2010. The claimant participated. The employer participated by Terri O'Brien, business manager. The record consists of the testimony of Lorraine Muller and the testimony of Terri O'Brien. Official notice is taken of agency records.

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 all of the evidence in the record, makes the following findings of fact:

The claimant was hired on August 25, 2009, as a substitute worker. She was an on-call employee. If a regular employee was absent, the claimant would be called for work. She has worked as an aide; in food service; and as a janitor. The claimant's wage when hired was \$11.47 per hour. She is still employed as a substitute worker for the employer. She now earns \$11.70 per hour. The claimant has no other employer. There are no wages in her base period from any other employer.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The evidence established that the claimant was hired as a substitute worker on August 25, 2009. She is an on-call employee who works as needed. She is still employed in that capacity. Her hourly wage has actually increased from \$11.47 an hour to \$11.70. She has no other employer at the present time. There are no other wages in her base period other than those paid by this employer. Iowa law states that if an individual is still employed in an on-call job in the same capacity as when hired, then the individual is not able and available for work. Benefits are denied as of September 26, 2010.

DECISION:

The representative's decision dated October 22, 2010, reference 01, is affirmed. The claimant is not able and available for work. Benefits are denied as of September 26, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw