

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN A ANDERSON
Claimant

APPEAL NO. 07A-UI-07759-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 07/01/07 R: 01
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 3, 2007, reference 02, decision that denied benefits for the week ending July 7, 2007. After due notice was issued, a telephone conference hearing was held on August 28, 2007. Claimant participated. Employer opted not to participate.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant normally worked full time on the 7:00 a.m. to 3:00 p.m. shift and was notified of the month's schedule on the 20th of the prior month. For the month of July, employer changed her shift with one day's notice and for the week of July 1 claimant had already made plans so was unable to work the full week during the 3:00 p.m. to 11:00 p.m. shift.

REASONING AND CONCLUSIONS OF LAW:

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

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".

871 IAC 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.

If employer normally posts schedules ten days in advance, it cannot reasonably expect to give one day's notice of a shift change on the schedule and not have some personal conflicts, especially during a holiday week. Claimant made herself reasonably available and made reasonable efforts to accommodate employer's schedule on short notice. Thus, she was available for work as she had been previously. Accordingly, benefits are allowed.

DECISION:

The August 3, 2007, reference 02, decision is reversed. The claimant is able to work and available for work effective July 1, 2007. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css