

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI R STARR
Claimant

APPEAL NO. 14A-UI-12083-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TSC INDUSTRIES INC
Employer

OC: 10/05/14
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 12, 2014, reference 02, which denied benefits as of October 5, 2014 finding the claimant did not meet the availability requirements of the law because she was unduly limiting her availability for work and not willing to work the number of hours required in her occupation. After due notice was provided, a telephone hearing was held on January 6, 2015. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue is whether the claimant unduly limited her availability for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lori R. Starr began employment with Tractor Supply Company in September 2012. Ms. Starr was hired as a part-time sales associate with no guarantee as to the minimum number of hours she would be assigned to work each week. Claimant was paid \$8.00 per hour.

In March 2013, the claimant was offered full-time work with Tractor Supply Company and accepted the full-time employment. In July 2014, a temporary manager was assigned to the facility where Ms. Starr was employed. The temporary manager unilaterally reduced the claimant's working hours from full-time status to part-time offering Ms. Starr approximately 10 hours of work per week. The claimant considered opening a claim for partial unemployment insurance benefits at that time but the claimant delayed opening her claim until October 5, 2014 and initially was found qualified to receive partial unemployment insurance benefits. The employer later protested the claimant's receipt of partial unemployment insurance benefits questioning the claimant's availability for work.

Ms. Starr renewed her educational pursuits after filing a claim for unemployment insurance benefits. Claimant testified that, at the time she had not been assigned any working hours for a one-month period by Tractor Supply Company and that although a full-time student, she is available to accept the part-time hours offered by Tractor Supply Company on Fridays, weekends and during evening hours. It is the claimant's position that she is available to accept almost all of the limited working hours that have been available to her since the company unilaterally reduced her full-time position to that of a part-time worker.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant has been able and available for work since establishing the claim for benefits on October 5, 2014. She has.

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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work and is earnestly and actively seeking work. Iowa Code section 96.4-3 and 871 IAC 24.22. The work search requirement may be waived if the claimant is engaged in approved training. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22. The above requirements are waived if the evidence indicates that the individual is partially unemployed, while employed at the individual's regular job or temporarily unemployed. Iowa Code section 96.4(3). An individual shall be deemed partially unemployed in any week in which while employed at the individual's then regular job, the individual works less than a regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus \$15.00. Iowa Code section 96.19(38)(b).

To satisfy the availability requirement, an individual must be willing, able and ready to accept suitable work or work available to them that the individual does not have good cause to refuse and must be attached to the labor market. Under the unemployment insurance laws it is the availability of the individual that is required to be tested, not the availability of specific work in the labor market. The labor market for an individual means the market for the type of service which the individual offers in the geographic area in which the individual offers the service.

Based on the evidence in the record and the application of the appropriate law, the administrative law judge concludes that because of the substantial permanent reduction in the claimant's working hours from full time to part time, with minimal hours available, the claimant has not unduly limited her availability for work. Claimant testified that she is at times, offered no hours per week, or very few working hours by Tractor Supply Company. The administrative law judge concludes the claimant is sufficiently available for work on evenings, Fridays, and weekends to satisfy the availability requirements of the law in this matter, and concludes that Lori Starr has been able and available for employment since establishing her claim for benefits.

DECISION:

The agency representative's decision dated November 12, 2014, reference 02, is reversed. Claimant has been able and available for work since establishing her claim for benefits. Unemployment insurance benefits are allowed, providing the claimant has met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs