

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA R OLSSON
Claimant

APPEAL NO. 07A-UI-09946-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WATERLOO COMMUNITY
SCHOOL DISTRICT**
Employer

OC: 09-02-07 R: 03
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 18, 2007, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on November 13, 2007. The claimant did participate. The employer did participate through Mickey Waschkat, Human Resources Specialist. Employer's Exhibits A, B, C and D.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant has wages in her base period that include only substitute teaching wages and part-time earnings from working for a teacher when she was a student. The claimant's wages are primarily comprised of on-call work, or more specifically from substitute teaching.

The claimant took herself off of the employer's substitute availability list beginning October 22, through December 23, 2007, because she is currently working another job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 96.19, 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)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 claimant's base period is comprised of wages that were earned as a substitute teacher and part-time wages. The claimant's wages were earned as a substitute teacher and hence she is considered an on-call worker and not unemployed within the meaning of Iowa Code section 96.19(9)a and b. Accordingly, benefits are denied.

Additionally, the claimant has now removed herself from availability by taking herself off the substitute list because she is working for another employer.

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant is not able to and available for work. Benefits are denied.

DECISION:

The October 18, 2007, reference 03, decision is affirmed. The claimant is not able to work and available for work effective September 2, 2007. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw