

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L ALLEN
Claimant

SPAS DE COR LLC
Employer

APPEAL 19A-UI-02172-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/23/18
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 8, 2019 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant is not available for work. The parties were properly notified of the hearing. A telephonic hearing was held on March 28, 2019. The claimant, Jennifer L. Allen, participated. The employer, Spas de Cor, L.L.C., did not register a telephone number at which to be reached and did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective September 23, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed with Spas de Cor, L.L.C. (“Spas”), since December 2012. She began employment in a part-time position, while also maintaining a full-time job with another employer. In September 2017, claimant accepted a full-time position with Spas, and moved to a part-time position with her other employer. Claimant held this full-time position with Spas, until September 2018.

On or about September 5, 2018, claimant’s other employer offered her a full-time position. As this would pay more money than she earned at Spas, claimant accepted this offer and told Spas she wanted to move into a part-time position. Spas agreed to let claimant go to part-time, and it hired someone to replace her in the full-time position. On September 14, claimant’s other employer laid her off. At the time, Spas did not have any full-time work available for her, as it had just filled her position.

Since filing for benefits effective September 23, 2018, claimant has been available for and actively seeking a full-time position. Claimant continued to work part-time at Spas while looking for full-time employment. Spas has a full-time position available for approximately one month, but claimant did not accept that position because she wanted to earn more money.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

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".

Iowa Admin. Code r. 871-24.22(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.

In this case, claimant provided unrefuted testimony that she has been able to and available for work since filing for benefits in September 2018. Claimant has been actively seeking a full-time position and made the requisite job contacts each week while also working part-time for a supplemental employer. Therefore, claimant has established she is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

The Benefits Bureau has not issued decisions on whether claimant is still employed by Spas de Cor, L.L.C., her supplemental part-time employer, at the same hours and wages as agreed to, whether the employer is subject to charge for her benefits, and whether claimant refused a suitable offer of work. This matter shall be remanded for further investigation of these issues.

DECISION:

The March 8, 2019 (reference 03) unemployment insurance decision is reversed. Claimant is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issues of whether claimant is still employed with a supplemental employer at the same hours and wages as agreed to and whether the employer is subject to charge are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination. Additionally, the issue of whether claimant refused a suitable offer of work with Spas de Cor, L.L.C., is remanded to the Benefits Bureau for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn