

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**APRIL L NEBINGER**  
Claimant

**DAVENPORT COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 18A-UI-06476-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/06/18**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 4, 2018, (reference 04), unemployment insurance decision that allowed benefits based upon being able to and available for work. After due notice was issued, a telephone conference hearing was held on June 28, 2018. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through contract specialist Jamie Kroeger.

**ISSUE:**

Is the claimant able to work and available for work effective May 6, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a paraeducator. The separation date was April 18, 2018, and has been resolved by the reference number 01. She had resigned on April 18, 2018, because of “family issues” and wanted to home school her children during the regular school year that ended June 4, 2018. Her contract ran from August 23, 2017 through June 5, 2018, and does not include summer work. Continued work would have been available had she not quit, and the employer would have provided reasonable assurance of continued employment for the 2018-2019 school year.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not available for work, and made an earnest search for work for the period in question. effective May 6 or May 27, 2018.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

**Benefit 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.

Iowa Admin. Code r. 871-24.23 provides:

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

**(3)** If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

**(7)** Where an individual devotes time and effort to becoming self-employed.

**(16)** Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

**(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant opted to home school during the regular school year when work was available to her. By making this choice, she failed to make herself available to work when work was traditionally

available to someone with her work experience and history. Further, she did not have an employment history in the summer break period of the traditional school year calendar, and would have been granted reasonable assurance of continued employment so would have not been eligible for benefits during the summer months had she continued working. Accordingly, she is not eligible for unemployment insurance benefits.

**DECISION:**

The June 4, 2018, (reference 04) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective May 6 or May 27, 2018. Benefits are denied, unless claimant makes herself available to work during the regular school year.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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<http://www.youtube.com/watch?v= mpCM8FGQoY>