

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA S ONEAL
Claimant

APPEAL NO. 08A-UI-06271-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-IOWA COMMUNITY ACTION INC
Employer

OC: 05/25/08 R: 02
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Andrea ONeal filed an appeal from a representative's decision dated July 2, 2008, reference 02, which denied benefits effective May 25, 2008 finding that the claimant did not meet the availability requirements of the law. After due notice was issued, a hearing was held by telephone on July 22, 2008. Ms. ONeal participated personally. Participating on behalf of the employer was Mr. Chuck Brewer, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant began employment as a substitute Head Start worker in September 2006. The claimant is on call and is used by the employer on a substitute basis, as need. Beginning in May 2008 Ms. ONeal's availability to respond to on-call assignments became limited due to lack of childcare. The normal hours that a substitute would be called by the employer would normally be from 8:00 a.m. to 5:00 p.m., Monday through Friday. Ms. ONeal did not have childcare arrangements that would allow her to accept an assignment, if called until approximately July 7, 2008 when she secured sufficient childcare arrangements.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Andrea ONeal was able and available for work during the time that she claimed unemployment insurance benefits. It does not.

The evidence in the record establishes that Ms. ONeal worked as an on-call substitute teacher for Head Start and held herself to be available for this employer. The claimant, however, was not available to accept intermittent on-call assignments, if called, because she did not have

sufficient childcare arrangements at the time that she opened her claim effective May 25, 2008 until approximately July 7, 2008 when she later secured sufficient childcare arrangements.

871 IAC 24.22(2)c and i(1) provide:

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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

For the reasons stated herein the administrative law judge concludes Ms. O'Neal was not available for work because her availability for work was unduly limited and because the claimant was a substitute worker limiting herself available for this employer.

DECISION:

The representative's decision dated July 2, 2008, reference 02, is hereby affirmed. Claimant's availability for work was unduly limited effective May 25, 2008. The claimant is ineligible for unemployment insurance benefits beginning May 25, 2008.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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