

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA A NILES**  
Claimant

**APPEAL NO. 09A-UI-06602-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAYLE'S BOOKKEEPING &  
TAX SERVICE INC**  
Employer

**OC: 03/29/09**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.5(1)a – Voluntary Leaving – Other Employment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 24, 2009, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 26, 2009. Claimant participated. Employer participated through Susan Zeman.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer and claimant is able to and available for work effective March 29, 2009.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant works as-needed evening and weekend hours as a receptionist/clerk during the tax season and last worked on February 28, 2009. She continues to be available for work in that capacity. She has other regular full-time employment in the base period.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant has not been separated from this employment and her availability for work is moot.

Iowa Code § 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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".

871 IAC 24.22(2)i(1) 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.

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.

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 § 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.

Because claimant was hired to work only on-call or as needed on a seasonal basis, the lack of additional work with this employer is moot given the other wages in the base period. Accordingly, benefits are allowed and the account of Gayle's Bookkeeping & Tax Service, Inc. (account number 305797) shall not be charged.

**DECISION:**

The April 24, 2009, reference 02, decision is modified in favor of the appellant. The claimant's seasonal on-call status renders this employment moot as she has other wages in the base period. Benefits are allowed and the account of Gayle's Bookkeeping & Tax Service, Inc. (account number 305797) shall not be charged.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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