

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SARAH M SCHMID**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 16A-UI-12958-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/23/16  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(27) – Active and Earnest Search for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 2, 2016, (reference 03) decision that denied benefits because claimant reported she was not available for work. After due notice was issued, a telephone conference hearing was set for December 22, 2016. Claimant participated. No hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

Is the claimant able to work and available for work, and did she make an adequate search for work for the week ending October 29, 2016?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed a weekly online response claim for the week ending October 29, 2016 and mistakenly pushed the wrong button indicating she was not available for work. Claimant was available for work during that week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant has made an active and earnest search for work for the week in question, and she was available for work during that week.

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.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Because the report indicating claimant was not able to or available for work was due to a keyboarding error, claimant is considered able to and available for work. Accordingly, benefits are allowed.

## **DECISION:**

The December 2, 2016, (reference 03) unemployment insurance decision is reversed. The claimant did make an active and earnest search for work and she was available for work for the

week-ending October 29, 2016. Benefits are allowed, provided the claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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