

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PEGGY M ROCKHOLD
Claimant

AYERS OIL CO
Employer

APPEAL 16A-UI-05849-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/27/16
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 May 18, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 10, 2016. The claimant participated personally. The employer participated through Jordon Ayers. Claimant exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
The claimant is a primary caregiver for her mother, and as a result, must coordinate her work schedule around the care schedule for her mother. Her brother is also a caretaker and works overnights, allowing the claimant to work a day shift and then spend evenings with her mother. The claimant was hired originally to work the 2:15 p.m. to 10:15 p.m. shift. However, the claimant discovered that when employees were late or did not show up to relieve her, she would have to stay late at the employer's site while her brother went to work at his evening job, leaving their mother unsupervised. This placed the claimant and her mother at risk, and so she notified her employer, early into her employment that she could only work until 8:30 p.m. to ensure she did not miss the hand-off of care between herself and her brother.

The claimant had three heart stints inserted in 2015 and a minor heart attack in March 2016 but had no restrictions to employment and did not miss work due to her medical condition after opening her claim for benefits. The claimant reported in January 2016, she requested two days off to care for her grandson. The employer reported the claimant requested to go part-time to care for her grandson. The claimant denied requesting part-time hours but stated that she wanted full-time hours, was available for full-time hours between 8:00 a.m. and 8:30 p.m. during

the week and to work weekends, but was only being scheduled part-time hours, on the weekends. When the claimant would ask Jamie Hamilton for additional hours or why people with less seniority were receiving hours within that range of availability, she was told the day shifts were covered. The employer reported the claimant had requested to move to full-time around May 16, 2016 by way of notifying Ms. Hamilton but she subsequently quit while preparations were being made.

The claimant further reported that she would notify the employer for additional hours and shifts when her brother was on vacation or lay off, which would permit her to extend her shift availability, but was not scheduled when making Ms. Hamilton aware of her extended availability. Jamie Hamilton was registered as an employer witness but was unavailable when called and did not respond to the ALJ's voicemail directing her to call the Appeals Bureau to participate. Ms. Hamilton did not furnish a written statement in lieu of participation.

The claimant has since been permanently separated from employment effective May 22, 2016. That separation has not yet been determined at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the claimant is a caregiver to her mother, she has demonstrated her ability and intent to work full-time, between the hours of 8:00 a.m. to 8:30 p.m. plus weekends. The claimant credibly testified she was hired full-time, and tried to work full-time hours, but her hours were at a part-time status, not at her request, but the employer. Further, the claimant attempted to obtain additional hours when her brother was not working, by notifying Jamie Hamilton but was not scheduled. Ms. Hamilton did not attend the hearing and did not refute the claimant's testimony. The hearsay testimony offered into evidence by the employer in this case does not overcome the credible and direct testimony offered by the claimant at the hearing. Therefore, based on the evidence presented, the administrative law judge finds the claimant has no medical restriction or other limitation on employability effective March 27, 2016. Accordingly, benefits are allowed.

REMAND:

The permanent separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The May 18, 2016 reference 02, decision is reversed. The claimant is able to work and available for work effective March 27, 2016. Benefits are allowed.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs