

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTA A KISTLER

Claimant

APPEAL NO. 08A-UI-06243-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANCHOR MOTOR COMPANY INC

Employer

OC: 05/18/08 R: 03

Claimant: Appellant (2/R)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Roberta A. Kistler (claimant) appealed a representative's July 3, 2008 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Anchor Motor Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-06244-DT. The claimant participated in the hearing. Will Reisinger appeared on the employer's behalf and presented testimony from one other witness, Carol Reisinger. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on or about February 11, 2008. She worked full time as an office manager. Her last day of work was May 16, 2008.

The claimant knew that the position for which she was hired was supposed to be a full-time position and required that she perform substantial accounting duties. However, by about mid-March the claimant realized she was over her head with regard to the job, and she began to suggest that the employer bring in someone else for the full-time job and allow her to assume some part-time role. By mid to late April the employer concurred and began to readvertise the position. As of May 16 a new employee had been hired and the employer agreed that the claimant need no longer continue in the position, and that after the problems left by the claimant's handling of the position had been sorted out, that the employer might be willing to allow the claimant to return in some part-time capacity.

The claimant has not returned to work with the employer since May 16. There has not been a determination made regarding the separation from employment. The claimant is searching for new employment on both a full-time and part-time basis.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3.

To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). Availability is determined in relation to the entire local labor market, not simply as to one employer. 871 IAC 24.22(2). It is also subject to change on a week-to-week basis, so even if the claimant had indicated that she was only available for part-time work as of the week beginning May 11, if she determined as of the week beginning May 18 that she could and would begin seeking some other full-time position, she would still be deemed available as of May 18. 871 IAC 22(2), (3). While a refusal of an offer of work from a particular employer might demonstrate unavailability, where the offer was accepted and then a determination is made by either party that the claimant could not perform the full-time duties of the job, a separation, not a refusal has occurred. While the claimant may not have been willing or able to perform the full-time duties of the job she had with the employer, she has demonstrated that she is able and available to work in some full-time gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

As became apparent in the hearing, the unresolved critical issue is whether there was a disqualifying separation from employment either through a discharge by the employer for work connected misconduct or a voluntary quit of the full time position by the claimant for reasons not attributable to the employer. This issue has not been previously adjudicated and was not included in the notice of hearing for this case; the case will be remanded to the Claims Section for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's July 3, 2008 decision (reference 02) is reversed. The claimant is able to work and available for full time work effective May 18, 2008. The claimant is qualified to receive

unemployment insurance benefits, if she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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