

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONI N LOPSHIRE

Claimant

APPEAL NO. 11A-UI-14845-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION

Employer

OC: 10/09/11

Claimant: Appellant (1-R)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Loni Lopshire filed a timely appeal from the November 10, 2011, reference 01, decision that denied benefits effective October 9, 2011, based on an Agency conclusion that she was unduly limiting her availability for work. After due notice was issued, a hearing was held on December 8, 2011. Ms. Lopshire participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Ms. Lopshire has been able to work and available for work since she established the original claim for benefits that was effective October 9, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Loni Lopshire began working for ABCM Corporation at the Bloomfield Care Center in 2008. For most of the employment, Ms. Lopshire has worked as a Certified Nursing Assistant. In October 2010, Ms. Lopshire went from full-time employment to on-call employment. Ms. Lopshire started college courses at Kaplan University in Urbandale in January 2011. Ms. Lopshire went to school three evenings a week from 6:00 to 10:00 p.m. In February or March 2011, Ms. Lopshire's employment became regular part-time employment, but she requested to work only every other weekend. Ms. Lopshire began to work eight-hour shifts on Saturday and Sunday every other weekend. Ms. Lopshire was staying in the Des Moines metro area and commuting to Bloomfield every other weekend. In April 2011, Ms. Lopshire decided to return to on-call employment status, because she was having difficulty with the commute to Bloomfield every other weekend. Ms. Lopshire indicates that the employer had contacted her three times since then to perform work. Workforce Development records indicate that Ms. Lopshire was approved for department approved training for the period of January 8, 2011 through October 8, 2011. However, Ms. Lopshire quit school in September, which ended the department approved training and waiver of the work search requirement. Ms. Lopshire returned to live in Bloomfield in a house owned by her mother. Ms. Lopshire's mother pays the utilities. Ms. Lopshire has three minor children and is due to give birth to a fourth on January 1, 2012. Ms. Lopshire has

not made arrangements for child care so that she can search for new employment or in case she is offered new employment, but indicates she will probably get a babysitter.

Ms. Lopshire was aware before she filed her new original claim for unemployment insurance benefits October 9, 2011, that Bloomfield Care Center was short on C.N.A.'s, but she made no contact with the employer to inquire about work hours. Ms. Lopshire did not make any job contacts until mid-November 2011, when a Workforce Development representative directed her to do so. Since then, Ms. Lopshire made just two job contacts. Ms. Lopshire has listed follow-up contact with those same two businesses repeatedly when she has made the weekly call to Workforce Development to continue her claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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) 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 Administrative Code section 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.23(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

While what happened prior to the new claim was effective October 9, 2011 provides background for what has happened since, it is Ms. Lopshire's availability since October 9, 2011 that is at issue in this case. The weight of the evidence indicates that Ms. Lopshire has not been available for work since she established her new original claim for benefits in October 2011. Ms. Lopshire has made minimal effort toward a search for new employment and has disingenuously listed the same two businesses as her job contacts for multiple weeks. Ms. Lopshire has not made reasonable arrangements for childcare so that she can engage in an active and earnest search for new employment, or so that she can actually appear for work if work is offered to her. It is noteworthy that Ms. Lopshire is due to give birth in the immediate future. Ms. Lopshire is aware that Bloomfield Care Center needs workers, but has elected to wait for a call from that employer, rather than initiate contact so that she can get work hours.

Because Ms. Lopshire has not demonstrated availability for work since she established the new original claim for benefits, benefits are denied effective October 9, 2011. The disqualification continued as of the December 8, 2011 appeal hearing.

DECISION:

The Agency representative's November 10, 2011, reference 01, is affirmed. The claimant has not been able and available for work since establishing her most recent original claim for benefits. Benefits are denied effective October 9, 2011. The disqualification continued as of the December 8, 2011 appeal hearing.

This matter is remanded to the Claims Division for determination of whether there has been a separation from ABCM Corporation and, if so, the impact on the claimant's eligibility for benefits and the employer's liability for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw