

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARIKA S OSBY

Claimant

APPEAL NO. 13A-UI-06528-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOWROYD WRIGHT EMPL AGENCY INC

APPLE 1 EMPLMT SVC

Employer

OC: 01/13/13

Claimant: Appellant (2-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 22, 2013 (reference 03) decision that denied benefits. After due notice was issued, a hearing was held on July 9, 2013 in Des Moines, Iowa. The claimant participated. The employer did not respond to the hearing notice instruction and did not participate.

ISSUE:

Is the claimant able to and available for work effective April 21, 2013?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has generally worked as a call center customer service representative, data entry clerk, or receptionist. She had last worked for the employer on March 15, 2013, when the assignment was completed and the employer had no work available. She has regular transportation available, either through her boyfriend or public transportation (bus). She is available to work from 8:00 a.m. to 10:00 p.m. during weekdays or weekends. She prefers central Des Moines work locations but is willing to work in the surrounding area as well. On Friday, April 19, 2013, she attempted to postpone a job interview with the temporary employment agency employer's client because she had a temporary transportation issue and relies on her boyfriend for assistance with transportation and child care so was unable to arrive on time because he would not arrive home until 7:30 a.m. and the bus schedule would require more than 30 minutes to get her to the interview by 8:00 a.m. The employer was unwilling to reschedule and cancelled the interview. The employer instructed her to call again when her transportation issues were resolved or it would list her as being inactive. Her availability for work with this and other employers has always been the same for work in the western suburbs, which was limited by her boyfriend's work schedule and the bus schedule. She did not file a claim for the week ending April 20.

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".

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.

Since claimant was available for the majority of the work week ending April 19, 2013, and did not file a claim for that week, her eligibility for that week is moot. Because she is and has been otherwise available for regular business hours of work and has regular transportation, she is available for work. Accordingly, benefits are allowed.

DECISION:

The May 22, 2013 (reference 03) decision is reversed. The claimant is able to work and available for work effective April 21, 2013. Benefits are allowed.

REMAND: Because the employer has not claimed there has been a separation but indicated she is merely inactive, the lock on the claim for a voluntary quit is inappropriate, especially because there is no accompanying decision to appeal, and shall be removed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css