

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE L CARKHUFF-SMITH**  
Claimant

**APPEAL NO: 07A-UI-06234-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DELONG SPORTSWEAR INC**  
Employer

**OC: 06/18/06 R: 02**  
**Claimant: Respondent (1R)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 19, 2007, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 10, 2007. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Teresa Beal.

**ISSUE:**

The issue is whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed until May 31, 2007 when she was discharged. As early as March, but more specifically as of May 4 she was partially laid off and her last day of work was May 18, 2007. On May 24, May 30, 31 her supervisor called her cell phone and left messages to report to work and she failed to report. She was paid benefits of \$156.00 for the week ending May 26, 2007 and \$95.00 for the week ending May 5, 2007.

**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 received no benefits the week ending June 2 her availability to work that week is moot. Because she was offered only one day of work the week ending May 26, she is considered to have been available the majority of the work week. Accordingly, benefits are allowed.

**DECISION:**

The June 19, 2007, reference 02, decision is affirmed. The claimant is able to work and available for work effective May 4, 2007. Benefits are allowed.

**REMAND:**

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

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs