

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NIKKI J HIDLEBAUGH**  
Claimant

**APPEAL NO. 09A-UI-00770-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAPITOL RESOURCES INC**  
Employer

**OC: 11/09/08 R: 02**  
**Claimant: Appellant (1-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Nikki Hidlebaugh, filed an appeal from a decision dated January 13, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 3, 2009. The claimant participated on her own behalf. The employer, Capitol Resources, participated by President Nicole Schlenger and was represented by Attorney Mike Mahaffey.

**ISSUE:**

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

**FINDINGS OF FACT:**

Nikki Hidlebaugh was employed by Capitol Resources beginning December 3, 2007 as a part-time campaign representative. She was hired to work 2:30 p.m. until 8:30 p.m. The work load expanded and the hours then changed to 3:30 p.m. to 10:30 p.m. effective April 21, 2008. The hours available are largely dependent on the requirements of the employer's clients.

On June 3, 2008, the claimant requested to be moved to the day shift and since her work was good, the employer agreed. She was placed on the 8:30 a.m. to 2:30 p.m. shift. Since most of her work was for the various political campaigns she was laid off effective November 5, 2008, and paid through the end of the week.

Another client with a new project started its project November 17, 2008, and the claimant agreed to return to work that day on the 5:00 p.m. to 9:00 p.m. shift. She worked only that day then notified the employer on November 18, 2008, she could not continue to work any hours but day hours due to child care problems.

The claimant's mother-in-law did day care during the day but she worked a second shift job and was not able to baby sit in the evening. Ms. Hidlebaugh's mother runs a licensed day care in her home during day and evening hours, but could not hold any opening for the claimant if there was a paying client who needed the opening. The claimant's husband works long hours without any specific time when he returns home. The employer has only 14 employees, only two of

which work during the day. The remainder work the evening hours because that is the time period during which the client wants the calls to be made.

The employer considers the claimant to have separated from employment effective with her last day of work on November 17, 2008. That issue has not been determined by the UIS division.

### **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 24.23(16) provides:

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

(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.

The claimant is not able and available to work during the hours in which work was available to work the hours required by the employer. This is due to a lack of child care which is also an availability issue under 871 IAC 24.23(8). The claimant cannot make herself available for work except within an extremely limited time frame and this has removed her from the labor market. She is ineligible for benefits.

The issue of whether the claimant's separation from employment is a disqualifying issue is remanded.

### **DECISION:**

The representative's decision of January 13, 2009, reference 01, is affirmed. Nikki Hidlebaugh is not able and available for work and is ineligible for unemployment benefits. The issue of

whether the claimant is disqualified from receiving unemployment benefits due to her separation from employment is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs