

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LATISHA M MASON
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 18A-UI-11471-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/28/18
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)b – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 16, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that she was still employed at the same hours and wages in the original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2018. Claimant participated and testified. Employer participated through Human Resource Risk Manager Sarah Fiedler.

ISSUES:

Is the claimant partially unemployed and available for work?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 31, 2018. Claimant's last assignment was as a full-time general laborer. Claimant voluntarily ended that assignment on October 20, 2018 because she had an issue obtaining adequate childcare. Claimant is still not able to work due to her childcare issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective October 28, 2018.

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".

Iowa Admin. Code r. 871-24.22(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 Admin. Code r. 871-24.23(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.

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant is currently not working or seeking work because she cannot find adequate childcare. By this inaction she has not established that she is available for work. Accordingly, she is not eligible for unemployment insurance benefits.

DECISION:

The November 16, 2018, (reference 01) unemployment insurance decision is modified with no change in effect. The claimant is not partially unemployed, but is totally unemployed and not able to work and available for work effective October 28, 2018. Benefits are denied.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs