

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTINA M HOUSTON
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 20A-UI-00841-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/29/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On January 28, 2020, Christina Houston (claimant) filed an appeal from the January 24, 2020 (reference 01) unemployment insurance decision that found claimant was not available for work.

A telephone hearing was held on February 12, 2020. The parties were properly notified of the hearing. The claimant participated personally. Team Staffing Solutions Inc. (employer) participated by Risk Manager Sarah Fiedler. Claimant's Exhibits 1-4 were admitted.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a temporary employee. Claimant's first day of employment was December 10, 2019. On that date she started an assignment at GCO, a call center. She worked two days at GCO: December 10 and December 16, 2019.

Claimant expected to work on December 11 and 12, but those hours were canceled by GCO. On December 13, a text was sent to claimant informing her of hours available that day until 11 p.m.; Saturday, December 14 from 9 a.m. to 11 p.m.; and Sunday through Tuesday, December 15 through 17, from 10 a.m. to 11 p.m. Exhibit 4. Claimant replied that she "already talked to them about" her hours. Claimant also received a text from GCO on December 20, 2019, informing her of hours available the following day from 10 a.m. to 9 p.m. Claimant did not work that day. Exhibit 4. No hours were available from December 23 to 26 due to the holidays.

Employer received no communication from claimant after that time. Employer attempted to contact her on December 30, 2019 and January 3, 2020. Messages were left for claimant but were not returned. The assignment was "closed" on January 8, 2020, due to a lack of contact

from claimant. Claimant has not been in contact with employer since that time to request further assignment. Claimant limited her availability for work to first shift and third shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the January 24, 2020 (reference 01) unemployment insurance decision that found claimant was not available for work is AFFIRMED.

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. 871-24.23(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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. *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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The administrative law judge found Fiedler's testimony to be more credible than claimant's. Fiedler offered specific information relevant to the issues. Claimant was unable to clearly recall what happened and when, and at times offered unclear responses to questions for specific information. While the administrative law judge is not suggesting claimant fabricated information, the information offered by Fielder was simply more reliable than the information offered by claimant.

There was work available to claimant on several days during the relevant timeframe. Claimant declined to take those shifts. Claimant then failed to communicate with employer to return to that assignment or request further assignment. While claimant is under no obligation to take shifts she is unable or unwilling to work or to seek further assignment, her failure to do so makes her unavailable for work under applicable law and therefore ineligible for benefits.

DECISION:

The January 24, 2020 (reference 01) unemployment insurance decision that found claimant was not available for work is AFFIRMED. If the circumstances have changed and claimant believes the disqualification can be removed, she may contact her local workforce development center and request it be removed.

Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

Decision Dated and Mailed

abd/scn