

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY FELL
Claimant

APPEAL NO: 17A-UI-02534-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LH & TM LLC
Employer

OC: 01/29/17
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 30, 2017. The claimant participated in the hearing with witness/associate Robert Myshka and witness/vendor Carolyn Reichart. Trisha Holthaus, former Owner, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant previously owned the business for 30 years before selling it to Ms. Holthaus October 1, 2013. At that point the claimant became a part-time employee of the business and typically worked an average of two days per week.

Ms. Holthaus decided to sell the business and found a buyer who intended to take over the store February 1 or March 1, 2017. As a result, Ms. Holthaus was in the store nearly every day in January 2017 and did not require as much help because usually only one person staffed the store during the week and two did so on weekends. Consequently, she only scheduled the claimant January 4, January 21 and January 26, 2017. The claimant worked January 4, 2017. Her long-time neighbor died and the claimant was unable to work January 21, 2017. The claimant worked until 4:00 p.m. instead of 6:00 p.m. January 26, 2017, because the store was slow and Ms. Holthaus returned from an appointment.

The claimant filed a claim for unemployment insurance benefits effective January 29, 2017, and consequently Ms. Holthaus chose not to schedule the claimant in February 2017. The store was sold March 1, 2017, and the claimant has been working three to five days per week since that time.

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 effective January 29, 2017.

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".

The claimant's availability did not change in January 2017. Rather, because the employer was preparing to sell the store she was there nearly every day, negating the need for another employee to be working in the store when she was present as generally during the week the employer only scheduled one person to work. The claimant was not able to work January 21, 2016, due to the death of her long-term neighbor, but not being able to attend work one day due to the death of a close friend does not equate to the employee not being able and available for work in the broader sense of the meaning of that phrase. The claimant was able and available to work her regular hours in January and February 2017 and has been doing so since the new owner took over March 1, 2017. Accordingly, benefits are allowed.

DECISION:

The February 22, 2017, reference 02, decision is reversed. The claimant is able to work and available for work effective January 29, 2017. Benefits are allowed, provided the claimant is otherwise eligible to receive them.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs