

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA A WINTERMOTE**  
Claimant

**APPEAL NO. 13A-UI-08298-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 06/16/13**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 3, 2013, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on August 19, 2013. Claimant participated. Employer participated through Shannon Hagensten. Department's Exhibit D-1 is entered and received into the record.

**ISSUE:**

Is the claimant able to and available for work and if so, is she still employed at the same hours and wages as at the time of hire?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a patient services assistant beginning on January 14, 2018 through date of hearing as she remains employed. The claimant was off on a leave of absence for non-work-related injury beginning on March 22, 2013. She was released to return to work on June 10, 2013. The employer had moved the claimant to an on-call status because she had been off work. When the claimant was released to return to work the employer had only on-call sporadic hours of work to offer her. The claimant did not qualify for FMLA because she had not worked enough hours in the prior year. Prior to her leave of absence the claimant had worked approximately twenty hours per week. The claimant was on vacation for the week of July 6, 2013 and was not able to and available for work for that one week only. Since returning to work the claimant has worked all hours offered her with the exception of the week she was on vacation. The claimant filed a claim for benefits with an effective date of June 16, 2013.

**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 with an effective date of June 16, 2013 with the exception of the one-week period ending July 6, 2013.

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".

Iowa Code § 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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.

The claimant was released to return to work without restriction. The employer no longer had her usual hours available for her to work. The claimant did not work the week ending July 6, 2013 because she was on vacation. An employee who is on vacation is not considered able to and available for work. Because the claimant is currently employed less than her regular part-time hours, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account. Accordingly, benefits are allowed, with the exception of the week ending July 6, 2013.

**DECISION:**

The July 3, 2013, reference 01, decision is modified in favor of the appellant. The claimant is able to work and available for work effective June 16, 2013 with the exception of the week ending July 6, 2013. Benefits are allowed.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs