

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOROTHY J TECH
Claimant

APPEAL 18A-UI-10258-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/29/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Dorothy J. Tech (claimant) filed a timely appeal from the October 3, 2018, reference 02 unemployment insurance decision that denied benefits after she reported she was not able to and available for work during the week-ending September 22, 2018. After due notice was issued, a telephone conference hearing was held on October 29, 2018 and consolidated with the hearing for appeals 18A-UI-10259-SC-T and 18A-UI-10260-SC-T. The claimant participated. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending September 22, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant mistakenly reported she was not able to and available for work during the week-ending September 22, 2018. The claimant was in the geographical area and did not have any restrictions on her ability to or availability for work that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work, and made an earnest search for work for the period in question. Benefits are allowed.

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 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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.

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. The claimant mistakenly reported she was not able to and available for work during her weekly continued claim for benefits. She has demonstrated to the satisfaction of the administrative law judge that she was able to and available for work the week-ending September 22, 2018. Benefits are allowed.

DECISION:

The October 3, 2018, reference 02, unemployment insurance decision is reversed. The claimant is able to work and available for work the week ending September 22, 2018. Benefits are allowed.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn