

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE A HANSON
Claimant

APPEAL NO. 06A-UI-10892-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVER CITY FORD TRUCK SALES INC
Employer

**OC: 10-15-06 R: 12
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 7, 2006, reference 03, decision that found her not able to and available for work and thus not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held on November 29, 2006. The claimant did participate. The employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: When the claimant began her employment she was working 40 hours per week. At her request she reduced her hours to 30 hours per week beginning in June 2006 because she only wanted to work part time. The employer had the claimant work full time from August until October while they searched for a replacement for another employee who had quit. The claimant was filling in for the vacant employee, but never told the employer she would be willing to go back to full-time work. The claimant wanted to job share with her daughter so she would be able to assist her husband in his business. The claimant went on vacation in October 2006 and when she returned to work on October 16, 2006 she was told she was discharged. The employer decided they did not want to have two people fill one position, but they wanted one full-time employee. Prior to going on vacation the claimant never told the employer that she would be willing to work full time, she left the employer with the impression that she wanted to return to part-time work.

The claimant is now currently working 26 hours per week babysitting and is not currently seeking other work.

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.

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".

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.

871 IAC 24.23(7), (16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

(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.

The claimant never told the employer she would be willing to work full time. She left the employer with the impression that she wanted to job share with her daughter and only work part time so she could assist her husband in his business. The claimant did not make herself available for the full-time work that the employer had available. Since her discharge the claimant has become self-employed babysitting for 26 hours per week and she is not seeking additional employment. Accordingly, the administrative law judge concludes the claimant is not able and available for work initially because she limited herself to part-time hours and more

recently because she ceased seeking work in an effort to become self-employed. Benefits are denied.

DECISION:

The November 7, 2006, reference 03, decision is affirmed. The claimant is not able to work and available for work effective October 16, 2006. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs