

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARILYN A SVOBODA**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 18A-UI-08721-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/18**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 9, 2018, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held on September 6, 2018. The claimant, Marilyn A. Svoboda, participated and was represented by Brandon W. Ruopp, Attorney at Law. The employer, Advance Services, participated through Melissa Lewien, Risk Management; and Kelly Wheeler, HR Coordinator. Employer's Exhibits 1 through 5 was received and admitted into the record without objection. Department's Exhibit D-1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work effective July 22, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was previously employed by Advance Services, Inc. During the week ending July 28, 2018, claimant was driving and her vehicle hit a deer. She could operate the vehicle and would still have been able to drive to work, if she had a job. Claimant was physically able to work during that week, and she was in town and generally available to accept a job. On Friday, July 27, claimant had a telephone conversation with Kelly Wheeler about some job opportunities in Grinnell. Specifically, they discussed an opportunity with Monsanto that involved skills that claimant had and that paid a wage comparable to claimant's previous wage. Wheeler asked claimant how soon she could be available to start working there, as that assignment's interview-to-employment turnaround was quick. At that time, claimant expressed that she had multiple commitments over the next several weeks and would not be available to start a new job until August 20, 2018. Wheeler said that was fine and told claimant to call her once she was available for work. Claimant never contacted Wheeler.

During the week ending August 4, claimant did not have transportation to and from work, as her car was in the shop getting fixed until August 9. Claimant was also working at the Ecumenical Bible School every day that week from 8:00 a.m. until 2:00 p.m. During the week ending August 11, claimant's husband had surgery and she was unavailable for four days that week because she was caring for him. During the week ending August 18, claimant was on vacation at the Iowa State Fair. During the week ending August 25, claimant was physically able to and available for work. She had working transportation and no commitments that prevented her from working. During the week ending September 1, claimant was physically able to and available for work. She had working transportation that week and was available to accept a job. Claimant worked at the school from 8:00 a.m. until 2:00 p.m. two days that week.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work for the one-week period ending July 28, 2018. Claimant is not able to and available for work effective July 29, 2018.

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 Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Iowa Admin. Code r. 871-24.23(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

Claimant filed a weekly continued claim for unemployment insurance benefits for the week ending July 28, 2018. She was able to and available for work that week. Benefits are allowed for the one-week period ending July 28, 2018.

Claimant filed weekly continued claims for unemployment insurance benefits for the weeks ending August 4, August 11, and August 18, 2018. Claimant was unavailable for work from July 29 through August 18, 2018, due to a combination of transportation issues, vacation, and personal life circumstances. Claimant was not able to and available for work during this period. Benefits are withheld for the weeks ending August 4, August 11, and August 18, 2018.

Claimant filed weekly continued claims for unemployment insurance benefits for the weeks ending August 25 and September 1, 2018. Claimant was able to and available for work those weeks. Benefits are allowed for the two weeks ending September 1, 2018.

The outstanding issue is whether claimant refused a suitable offer of work when she declined to accept the July 27 offer or follow up with the employer on August 20. This matter will be remanded for an investigation into that issue.

**DECISION:**

The August 9, 2018, (reference 03) unemployment insurance decision is modified in favor of claimant/appellant. Claimant was able to and available for work for the one-week period ending July 28, 2018. Claimant is not able to and available for work for the three weeks ending August 18, 2018. Claimant was able to and available for work for the two weeks ending September 1, 2018. Benefits are allowed for the weeks ending July 28, 2018; August 25, 2018; and September 1, 2018; provided she is otherwise eligible.

**REMAND:**

The issues of whether the employer extended a suitable offer of work, whether claimant refused to accept that offer, and whether claimant had good cause for the refusal are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/scn