

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY E TWOMBLEY**  
Claimant

**APPEAL NO. 09A-UI-00517-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUEING INC**  
Employer

**OC: 11/02/08 R: 01  
Claimant: Appellant (1)**

Section 96.4-3 – Able to and Available for Work

**STATEMENT OF THE CASE:**

Nancy E. Twombley (claimant) appealed a representative's January 2, 2009 decision (reference 01) that concluded she was not eligible to receive benefits because she limited the hours she was available to work for Hueing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer.

After the claimant had been excused and the hearing had been closed, the employer contacted the Appeals Section to participate in the hearing. Since the employer did not read or follow the hearing instructions, the employer's request to reopen the hearing was denied. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant restricting the hours she is willing to work for the employer?

Is the claimant eligible to receive benefits as of November 2, 2008?

Is there good cause to reopen the hearing?

**FINDINGS OF FACT:**

The claimant started working for the employer in September 2007. The claimant worked full-time as a supervisor in customer service. The claimant was off work for a medical condition for seven weeks. The medical condition was not work-related.

The claimant's physician released her to work on October 2, 2008. The claimant was only released to work part-time. The claimant told the employer she would like to work 27 hours a week. The employer considers less than 30 hours a week part-time employment. Instead of being able to work at 6:00 a.m., the claimant was able to start work at 6:30 or 7:30 a.m. because she had to have someone drive her to work. The claimant could only work every other day.

When the employer did not schedule the claimant to work 27 hours a week, but instead scheduled her 0 to 13 hours, the claimant established a claim for unemployment insurance benefits during the week of November 2, 2008. As of the date of the hearing, the claimant is still unable to drive and can only work part-time.

The employer did not contact the Appeals Section prior to the hearing to provide the phone number or the name of the employer's witness. When the employer called the Appeals Section at 10:30 a.m., or 30 minutes after the scheduled hearing, the claimant had been excused and the hearing had been closed.

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

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The administrative law informed the employer the hearing could not be reopened because the employer did not read or follow the hearing instruction by contacting the Appeals Section prior to the hearing. The employer had not established good cause to reopen the hearing.

A claimant is not disqualified from receiving benefits when she has to leave employment as the result of an injury or illness but offers to return to work after she has recovered and her physician releases her to work if she offers to return to work at her regular job. Iowa Code § 96.5-1-d. The evidence shows the claimant had been off work for medical reasons and could not work for seven weeks. The claimant offered to return to work as of October 2, but instead of working full-time as she had before, the claimant was only released to work part-time. The law presumes a claimant is available for work if she is available for work on the same basis she has earned her base period wages. 871 IAC 24.22(2)(a). With the restrictions the claimant placed on her availability, working part-time instead of full time that she had been working before she was off on medical leave, the claimant has restricted her availability to work. This has resulted in the claimant's partial unemployed status. When the claimant is released to work full time as she had worked during her base period and offers to work full time, the claimant may then be eligible to receive benefits if the employer does not have full-time work available for her. As of November 2, the claimant does not meet the availability requirements under the unemployment insurance law, Iowa Code § 96.4-3. The claimant is not eligible to receive benefits as of November 2, 2008.

**DECISION:**

The employer did not establish good cause to reopen the hearing. The representative's January 2, 2009 decision (reference 01) is affirmed. The claimant is not available to work full time as she had been working before she was off work for medical reasons. As a result, the claimant has limited the hours she is available to work and is not eligible to receive benefits as of November 2, 2008. If the claimant is released to work full time and offers to work full time again, she may reopen her claim if the employer does not have full-time work for her.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw