

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE CRIST

Claimant

APPEAL NO: 15A-UI-10093-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC

Employer

OC: 08/02/15

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 26, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 22, 2015. The claimant participated in the hearing. Carol Hughes, Staffing Manager; Kylie Ladely, Recruiter; and Cindi Mahlstadt, Office Administrator participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the law.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time data entry clerk for Midwest Professional Staffing last assigned to XPO from April 11, 2013 to July 31, 2015. The assignment ended due to a lack of work and the claimant's attendance record which had suffered when her diabetes was out of control during the last few months of her assignment.

After the assignment ended the employer offered the claimant an assignment at Equifax August 13, 2015, but she did not want to do customer service work over the phone. The employer also offered her a position at Marsh as an accounting technician on that date but the claimant stated she did not like the general ledger work. On August 25, 2015, the employer left the claimant a voice mail with a position a part-time temp-to-hire position at Wire One in Pleasant Hill and a short-term assignment at Casey's. On August 26, 2015, the claimant spoke to the employer by phone and initially told the employer she was not interested in driving to Pleasant Hill, especially for a part-time position. On August 27, 2015, the claimant left the employer a voice mail stating she was open to opportunities but wanted to stay in the Des Moines or West Des Moines area and the employer stated it would follow up with her if anything became available. On August 28, 2015, the claimant called back and said she would like to be considered for the Wire One position and the employer discussed the situation and declined to offer that job or any others to the claimant because of her initial resistance to the position and her attendance record.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

While the claimant was hesitant to accept the part-time position at Wire One in Pleasant Hill, due to the driving distance, she did notify the employer she was interested in it August 28, 2015. At that time the employer decided not to offer the claimant any further assignments.

Because the employer made the decision to no longer offer the claimant any future assignments, which is obviously its right to do, that does not mean the claimant is not able and available for work as she is not required to accept every position offered and did come back and tell the employer she would take the position at Wire One.

Under these circumstances, the administrative law judge concludes the claimant is able and available for work within the meaning of the law. Therefore, benefits are allowed.

DECISION:

The August 26, 2015, reference 01, decision is reversed. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css