

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA R SCHULZ**  
Claimant

**APPEAL NO. 07A-UI-06036-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/27/07 R: 01  
Claimant: Appellant (2)**

Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Donna Schulz filed a timely appeal from the June 12, 2007, reference 01, decision that warned her she was required to make two in-person job contacts each week she claimed benefits. After due notice was issued, a hearing was held on July 3, 2007. Ms. Schulz participated. The administrative law judge took official notice of the Agency record of the claimant's prior claims for benefits based on temporary layoffs from Upper Des Moines Opportunity, Inc and received Exhibit A and Department Exhibit D-1 into evidence.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing his/her claim for benefits.

Whether the claimant is exempted from the provisions of Iowa Code section 96.4(3) based on temporary layoff from her regular full-time employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Donna Schulz had been employed by Upper Des Moines Opportunity Inc. (UDMO) as a full-time head start teacher since August 1993 and continues in the employment at this time. UDMO is a non-profit community action program that provides several different programs and services to low income families in at least eight Iowa counties. UDMO operates a head start program. The head start program collaborates with, but does not provide educational services to or on behalf of an educational institution.

Ms. Schulz most recently performed work for UDMO on May 23, 2007, one day after the close of spring head start classes. Ms. Schulz and the employer both expect Ms. Schulz to return to the employment on August 8, 2007 for orientation and for the start of fall classes on August 13, 2007. Ms. Schulz was laid off on May 23, 2007 and will continue on layoff status until recalled to the employment in August. UDMO is Ms. Schulz's only base period employer.

## REASONING AND CONCLUSIONS OF LAW:

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.

An individual shall be deemed *temporarily unemployed* if for a period the individual is unemployed due to a lack of work from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The evidence in the record indicates that Ms. Schulz is temporarily unemployed, is still job-attached, and is exempted from the availability requirements of Iowa Code section 96.4(3). Ms. Schulz is eligible for benefits, provided she is otherwise eligible.

## DECISION:

The Agency representative's June 12, 2007, reference 01 is reversed. The claimant is temporarily unemployed from her regular full-time employment. The claimant is exempted from

the availability requirements of Iowa Code section 96.4(3). The claimant is eligible for benefits, provided she is otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs