

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BECKY J WILSON**  
Claimant

**APPEAL NO. 06A-UI-11737-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRN STAFFING INC**  
Employer

**OC: 11-05-06 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 5, 2006, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 21, 2006. Claimant participated. Employer participated through Stephanie Nicholson and was represented by Mike Kennedy, Attorney at Law.

**ISSUE:**

The issue is whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed on a temporary basis time. She last worked for this employer on or about November 4, 2006 and began working again on or about December 4, 2006 with Home Watch Care Givers. For that month she did not work but sought work by making at least two in-person work searches each week in addition to contacting employer indicating her availability to work. She declined only one offer of one night shift on November 22 after employer asked her to work that night after she had driven home from out of town and was too fatigued to work safely. On November 8, she advised employer she would also be looking for other work since it could not provide her sufficient hours. She has reported all wages.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

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.

Claimant's inability to work at the last minute due to fatigue after a long drive on one occasion during the month of unemployment does not render her otherwise unavailable for work. Accordingly, benefits are allowed.

**DECISION:**

The December 5, 2006, reference 02, decision is affirmed. The claimant is able to work and available for work effective November 5, 2006. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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