

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M HARTNEY
Claimant

APPEAL NO. 11A-UI-12661-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT
Employer

OC: 02-13-11
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2011, reference 01, decision that put her on notice she was no longer considered temporarily unemployed and must begin to search for work by making no fewer than two in-person job contacts per week. After due notice was issued, a hearing was held on October 18, 2011. The claimant did participate. The employer did not participate as James Wells did not answer the telephone when called to begin the hearing, nor did he return the administrative law judge's voice mail message before the hearing was completed.

ISSUE:

Is the claimant obligated to make job searches?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a park ambassador on a part time seasonal basis time beginning May 8, 2011 through September 9, 2011 when she laid off due to lack. The claimant has been unemployed more than four weeks and there is no guarantee of assurance that she will ever be called back to work.

REASONING AND CONCLUSIONS OF LAW:

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 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

871 IAC 24.22(2)c 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

871 IAC 24.23(27) provides:

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

871 IAC 24.2(1)c(2) and (3) provide that group "1" claimants are those who no longer meet the definition of group "3" claimants if they are temporarily unemployed for a period "not to exceed four consecutive weeks" because of a lack of work.

Because claimant is permanently laid off from work, she claimant is obligated to make at least two in-person work searches during each week benefits are claimed and may not restrict himself to temporary or intermittent work while waiting to be recalled to work.

DECISION:

The September 21, 2011, reference 01, decision is affirmed. The decision advising claimant that she is no longer considered temporarily laid off and that she must conduct at least two in-person work searches during each week benefits are claimed was appropriate.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css