

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRENNA L GRIFFITH**  
Claimant

**ELS OF FLORIDA INC**  
Employer

**APPEAL 21A-UI-15036-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/21/21**  
**Claimant: Appellant (3)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the June 23, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 26, 2021 at 11:00 a.m. Claimant participated. Employer participated through James Clyde, Senior Staffing Coordinator. No exhibits were admitted.

**ISSUE:**

Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for benefits effective March 21, 2021. Since that time claimant has been employed on-call with Debritech. Claimant has not been seeking work since March 21, 2021, because she has been waiting to be called back to work by Debritech. Between March 6, 2021 and August 19, 2021, ELS of Florida has contacted claimant 18 times via telephone or email with offers of work, including full-time, temp-to-hire positions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not able to work, available for work and actively and earnestly seeking work. Benefits are denied.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant is waiting to be recalled to work with Debritech and is not considering suitable work with other employers. Claimant is not available for work. Accordingly, benefits are denied.

**DECISION:**

The June 23, 2021 (reference 02) unemployment insurance decision is modified in favor of respondent. Claimant is not available for work. Benefits are denied effective March 21, 2021.



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August 31, 2021  
Decision Dated and Mailed

acw/ol