

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SUSIE E BECK-WEIHS**  
Claimant

**APPEAL NO. 21A-UI-12799-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 04/11/21  
Claimant: Appellant (5)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant, Susie Beck-Weihs, filed a timely appeal from the May 18, 2021, reference 01, decision that denied benefits for the period of May 9, 2021 through July 3, 2021, based on the deputy's conclusion that the claimant was not available work during that period. After due notice was issued, a hearing was held on July 10, 2021. Claimant participated. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning May 9, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Until Friday, April 2, 2021, the claimant was employed by West Lakes Surgery Center as a full-time nurse supervisor for patient admitting and recovery. The claimant's work day would start as early as 4:30 a.m. and would end at noon. The claimant was laid off in connection with a cost-saving reorganization. The claimant offered to stay on as a staff nurse, but the employer advised there were no such open positions.

In January 2021, the claimant's mother commenced residing with the claimant and the claimant's husband. The claimant's mother is 96 years old and suffers from dementia. The claimant's husband retired in October 2020 and was available to assist with the claimant's mother's needs while the claimant was at her job at West Lakes Surgery Center.

Prior to being laid off, the claimant had entered into discussion with West Lakes about temporarily reducing her work hours to the first five hours of the shift and using her substantial accrued paid time off (PTO) for the remainder of the shift hours.

What had been a workable situation for the claimant while she was with West Lakes took turns for the worse after the claimant was laid off from that employment. On April 5, 2021, the claimant's husband fell and broke his left foot. The claimant's husband was thereafter in a CAM boot and unable to drive. On April 7, 2020, the claimant's husband was diagnosed with cancer. The claimant's husband's inability to drive required that the claimant be available to drive her husband to various diagnostic medical appointments that ultimately led to surgery on May 10, 2021. The claimant then needed to take her husband to daily radiation treatments that commenced on May 12, and to weekly chemotherapy treatment that commenced on May 13, 2020. The daily radiation treatments were set in the afternoon. The chemotherapy involved a four-hour appointment on Thursdays from 10:00 to 2:00 p.m. At the time of the appeal hearing, the claimant's husband continued intensive cancer treatment.

The claimant established an original claim for benefits that was effective April 11, 2021. The claimant's base period wages consist entirely of wages for her full-time, day-shift work with West Lakes Surgery Center. After the claimant established her original claim for benefits, she made weekly claims for each of the eight weeks between April 11, 2021 and June 5, 2021. The claimant then discontinued her claim.

The claimant initially tried to determine how she could make herself available for full-time employment and what work hours would allow her to meet the needs of her husband and her mother. The claimant eventually settled on the idea that she could only work overnight shifts and later concluded that she could only work part-time hours.

During the week that ended May 15, 2021, the claimant applied for a full-time nursing position at Cedar Ridge Village. The work hours were 6:00 a.m. to 2:30 p.m. Though the claimant thought she might be able to make the hours work, that belief was not reasonable in light of her need to transport her husband to and from medical appointments during hours that would conflict with the prospective employment. The prospective employer did not respond.

During the week that ended May 15, 2021, the claimant also submitted her resume in application for a full-time registered nurse clinical supervisor position. The advertisement for the position did not provide the work hours. The prospective employer did not respond.

During the week that ended May 15, 2021, the claimant also applied for an infusion nursing position. The claimant was unclear whether the employment would be full-time or part-time.

During the week that ended May 22, 2021, the claimant applied for a full-time admitting nurse position at WesleyLife Hospice. The prospective employer promptly contacted the claimant regarding an interview. When the claimant inquired about the work hours and learned the position was day-shift hours, she advised the prospective employer she could not work day shift hours and discontinued the discussion. The claimant spoke to the same prospective employer regarding a part-time, on-call nurse position, but discontinued that discussion when learned the rate of pay.

During the week that ended May 22, 2021, the claimant also participated in a phone interview regarding a staff nurse position at Lakeview Surgery Center. The claimant was interested in pursuing early day-shift hours and unreasonably thought she could make 6:00 a.m. to 2:30 p.m. work. The claimant learned that the position required that she be available to handle appointments later than 2:30 p.m. as necessary, which ended the discussion.

On May 25, 2021, the claimant accepted a part-time, overnight nursing position at a skilled nursing facility. However, in light of the claimant's busy schedule attending her husband's

cancer treatment, the claimant and the prospective employer agreed to a July 27, 2021 delayed start date. The claimant did not report job contacts for the week that ended May 29, 2021, even though the contact to accept employment would count as one job contact for that week. The claimant was at that point unclear whether she should continue making weekly claims in light of her acceptance of the new employment. The claimant spoke with an Agency representative, who told her she was required to continue to make job contacts if she wished to continue the claim for benefits. With that in mind, the claimant made more than one weekly claim, for the week that ended June 5, 2021, and reported two job contacts for that week, though she did not actually conduct a work search that week. The claimant then discontinued her claim.

## **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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

The claimant's substantial family responsibilities prevented the claimant from being available for work within the meaning of the law during the period April 11, 2021 through June 5, 2021. The claimant's base period wage credits are based on a history of full-time, day shift work. The claimant's substantial family responsibilities prevented the claimant from being available for full-time, day shift work from the time she established her claim for benefits. The claimant's need to attend to her husband and mother's needs is completely understandable, but causes undue restrictions on the claimant's availability for work. The claimant is not eligible for unemployment insurance benefits for the period of April 11, 2021 through June 5, 2021.

**DECISION:**

The May 18, 2021, reference 01, is modified as follows. The claimant was not available for work within the meaning of the law during the period of April 11, 2021 through June 5, 2021 and is not eligible for benefits for that period. Because the claimant did not make weekly claims for the period beginning June 6, 2021, there is no need or basis to address the able and available issues for that period at this juncture.



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James E. Timberland  
Administrative Law Judge

October 25, 2021  
Decision Dated and Mailed

jet/scn