

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TARA NORRIS
Claimant

APPEAL 21A-UI-07193-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TTEC HOME LLC
Employer

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On March 9, 2021, Tara Norris (claimant) filed an appeal from the March 5, 2021, reference 02, unemployment insurance decision that denied benefits effective December 6, 2020, based upon the determination she was employed in the same hours and wages and was not able to and available for work. After due notice was issued, a telephone hearing was held on May 19, 2021. The claimant participated. The employer did not respond to the hearing notice and did not participate. The claimant's Exhibits A through D were admitted into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work, available for work, and actively and earnestly seeking work effective December 6, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer hired the claimant on June 16, 2020, to work as a full-time Customer Service Representative. The claimant's assignment ended on December 7; however, she was offered a new assignment the day before which she accepted. The claimant was told to wait for further instructions. The employer did not have work available to the claimant until January 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily unemployed and considered able to and available for work effective December 6, 2020. Benefits are allowed.

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 Code section 96.19(38) provides:

Definitions.

38. Total and partial unemployment

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency 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 Admin. Code r. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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 claiming benefits has the burden to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The employer did not have work available to the claimant from December 7, 2020, through January 6, 2021.

The claimant was temporarily unemployed during that time, and she is considered able to and available for work. Benefits are allowed.

DECISION:

The March 5, 2021, reference 02, unemployment insurance decision is reversed. The claimant was temporarily unemployed and is considered able to work and available for work effective December 6, 2020. Benefits are allowed.



Stephanie R. Callahan
Administrative Law Judge

May 26, 2021
Decision Dated and Mailed

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