

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOU D HORTON**

Claimant

**APPEAL NO. 08A-UI-01037-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF DAVENPORT**

Employer

**OC: 01/06/08 R: 04  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 24, 2008, reference 01, decision that required claimant to begin searching for work effective January 20, 2008 without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a telephone conference hearing was held on February 13, 2008. Claimant participated. Employer did not participate.

**ISSUE:**

The issue is whether claimant is no longer considered temporarily unemployed as of January 20 and must search 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 as a part-time compost facility worker at \$15.00 per hour. She was laid off effective December 1, 2007 but does have some reduced hours in the winter. She is scheduled to return to her regular duties on April 1, 2008 but is also scheduled to work at least February 15, February 29, and March 5.

**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.

Since claimant is scheduled to work sporadic days during the layoff period, she is not considered permanently laid off from work. As such, she is not obligated to search for work.

**DECISION:**

The January 24, 2008, reference 01, decision is reversed. Claimant is not permanently laid off from work and need not search for work.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw