

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY S COLLINS

Claimant

APPEAL NO. 07A-UI-05815-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HERRICK DENTAL PC

JEFFREY G HERRICK DDS

Employer

**OC: 05/06/07 R: 02
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 30, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 12, 2007. Claimant participated. Employer participated through Wendy Herrick.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full time from November 27, 2006 until she either quit or was discharged sometime between May 15 when employer placed a help wanted ad and May 22, 2007 when she was not advised the office was again open for business. The separation issue has not yet been adjudicated.

Employer was absent from the office from May 6 through 11, 2007, due to an ill family member. Sometime during this week claimant filed a claim for benefits. Claimant worked Sunday, May 6 to help change appointments. Dr. Herrick told claimant not to report to work on Monday, May 7. Claimant worked partial days on May 8, 9 and 10 and voluntarily left early without being told to do so by employer. Brenda, dental assistant and office manager in Herrick's absence, told claimant not to report to work on Friday, May 11.

Claimant called in sick the entire week of May 14 through 18, 2007. She contacted Wendy Herrick on Thursday, May 17, and said she anticipated feeling well enough to report to work on Monday, May 21. Herrick had just been notified that the family member had died so she was not sure when the office would be open. Claimant was available to work effective May 21, 2007 and called employer on May 20 to find out when the office would be open again. She left a message indicating she had heard office was closed Monday, if it was to be open on Tuesday, to please call her and let her know. Employer did not return her call.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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 24.22(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.

871 IAC 24.23(1) and (29) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Claimant was not available for work from May 6, 2007 to May 19, 2007 because she failed to work when hours were available and she was ill for an entire week. As of May 20, 2007, claimant is considered able to and available for work since she called employer and indicated

her ability to work as of May 21 and employer did not return her call indicating when the office would reopen (May 22, 2007).

DECISION:

The May 30, 2007, reference 01, decision is modified in favor of the appellant. The claimant is not able to work and available for work from May 6, 2007 to May 19, 2007. Claimant is able to work and available for work effective May 20, 2007 and benefits are allowed as of that date.

REMAND: The separation issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css