

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JILL MARTIN

Claimant

and

DANCING BEARS LLC

Employer

HEARING NUMBER: 19BUI-06105

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.4-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES ON THE ISSUE OF AVAILABILITY** as set forth below.

FINDINGS OF FACT:

Jill Martin (Claimant) filed for unemployment insurance benefits with an effective date of September 30, 2018. She filed an additional claim on July 14, 2019, and reopened her claim on July 21, 2019 following her separation from employment from Dancing Bear, Inc. (Employer). The Claimant worked at Colorpoint, Inc., as a seasonal part-time employee until August 2, 2019. She also cared for her granddaughter twenty-five to thirty hours per week. She was not required to care for her granddaughter but did so while looking for work.

REASONING AND CONCLUSIONS OF LAW:

We emphasize that the Employer did not appeal the decision finding that the separation from employment was **not** disqualifying. The only decision before us is the decision finding that the Claimant was not able and available for work. The decision of the Administrative Law Judge finding that the Claimant was not disqualified based on the nature of the separation from the Employer was not appealed by the deadline and as a result that decision is final and binding.

Iowa Code section 96.4(3) (2019) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

871 IAC 24.22 expounds on this:

24.22(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.

...

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

The general rules on availability emphasize how individualized the issue is. Meanwhile, the issue of working while collecting benefits is addressed in rule 24.23:

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

24.23(7) Where an individual devotes time and effort to becoming self-employed.

....

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

871 IAC 24.23. We first note about the self-employment rule that the disqualification applies if the individual devotes "time and effort" to "becoming" self-employed. This is not a bright line rule. Had the law meant all self-employment is *per se* disqualifying it would read simply "where an individual is self-employed." Instead the focus is on time and effort. The question is, how much time and effort? This is answered by context. The general rule on availability requires that a claimant be "genuinely attached to the labor market." In this context the "time and effort" standard is whether so much time and effort is devoted to self-employment that the

Claimant is no longer genuinely attached to the labor market. Meanwhile under rule 24.23(23) a claimant who is working odd jobs while collecting benefits becomes unavailable if “working to such a degree that removes the claimant from the labor market.” The touchstone is genuine attachment to the labor market for both self-employment, and odd-job employment. Here the mere fact that the Claimant was babysitting while looking for work does not mean she is not available for work. There was no evidence showing that the Claimant would not simply quit babysitting when she found a new job. This being the case we find that she was available for full-time work once her job with Colorpoint ended in August.

We note that the Employer is not chargeable on this claim, although it may be if the Claimant files a subsequent benefit year claim.

DECISION:

The administrative law judge’s decision dated September 4, 2019 is **REVERSED ON THE ISSUE OF AVAILABILITY**. We find the Claimant was not rendered unavailable by her babysitting activities.

The Claimant is denied benefits for the weeks ending July 27 and August 3, 2019. She is allowed benefits thereafter provided she remains otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv