

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JINGHA ZHAO
Claimant

APPEAL 21A-UI-22737-SN-T

**ADMINISTRATIVE LAW JUDGE
AMENDMENT DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/25/21
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2021 (reference 02) unemployment insurance decision that denied benefits for the week ending September 4, 2021, based upon the conclusion she was not able to and available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on December 7, 2021. The claimant participated. Official notice was taken of the administrative file. No exhibits were received into the record.

ISSUE:

Was the claimant able to work and available for the week ending September 4, 2021?

FINDINGS OF FACT:

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

The claimant last worked for the University of Iowa Hospitals and Clinics. She separated from that employer when she completed her contract of hire. Since separating from that employer, the claimant has been actively applying for full-time or part-time telepsychiatry jobs.

The administrative record KCCO shows the claimant made an entry she was not able and available for the week ending September 4, 2021 when she made her weekly claims for that week. The claimant testified she must have hit the wrong button in error.

On September 2, 2021, the claimant applied for two jobs through Indeed.com, an online application portal. One application was made for a part-time telepsychiatry opening at Monroe and Weisbrod. The other application was made for a full-time telepsychiatry opening at Skypiatrist.

The claimant was not ill during that week. She had adequate transportation to commute to a job if offered. She is not a full-time student. She had adequate childcare if a job had been offered to her. She was in the geographic area she needed to be in to accept work. The claimant also did not refuse an offer of work that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for the week ending September 4, 2021?

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(1)a 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.

(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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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

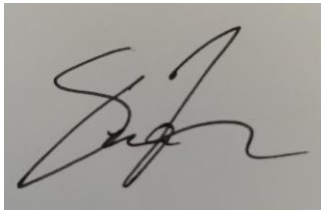
described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment 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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant was actively applying for jobs during the week in question. The claimant also credibly testified that she did not have meet any of the availability disqualification criteria listed in Iowa Admin. Code r. 871-24.23. The claimant merely pushed the wrong button when filing her weekly claim for that week. Accordingly, she is not eligible for unemployment insurance benefits.

DECISION:

The October 5, 2021 (reference 02) unemployment insurance decision is reversed. The claimant was able to work and available for work for the week ending September 4, 2021. Benefits are granted, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
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January 21, 2022
Decision Dated and Mailed

smn/mh