

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SILVIA M SNYDER
602 E ST
HAMBURG IA 51640-1618

ADVANCE SERVICES INC
c/o FRICK UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 06A-UI-06368-LT
OC: 05-29-05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Employer filed a timely appeal from the June 12, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on July 11, 2006. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Sheila Cuykendall. The issue is whether claimant is available for work effective May 21, 2006. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time long-term temporary packer working third shift at \$9.00 per hour at Con-Agra from November 28, 2003 through May 15, 2006 when she was dismissed from the assignment due to sleeping in the breakroom and exceeding her break time.

On May 19, employer offered her part-time work when she picked up her check. But she declined since it was not offering full-time hours.

On May 22, 23 and 24, employer attempted to reach claimant and left messages with her mother-in-law. On May 31, employer offered claimant a "temp-to-hire" position at Excel on first shift at \$10.50 per hour, for a six-day workweek. Claimant declined due to a lack of transportation since it was 17 miles from her residence in Hamburg.

Employer again contacted claimant in mid-June with an offer to work at Excel on third shift at \$10.65 per hour, but claimant declined due to a lack of childcare.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not 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(3), (4), 16) and (18) provide:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

Claimant's separation from the assignment was due to her sleeping on the job and taking extended breaks, thus she caused her own separation from that assignment. She then declined part-time work and did not return employer's phone calls through May 30. On May 31, she declined work due to a lack of transportation and two weeks later because of a lack of childcare. Accordingly, benefits are allowed through the week ending May 26 and are denied as of May 27 due to her unavailability for work.

DECISION:

The June 12, 2006, reference 02, decision is affirmed. The claimant is able to work and available for work effective May 21, 2006 through May 26, 2006. Benefits are allowed for that one-week period.

dml\cs