

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA TORRES

Claimant

APPEAL 16A-UI-09276-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL

Employer

OC: 07/31/16

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 22, 2016, (reference 01) unemployment insurance decision that denied benefits because she was still employed for the same hours and wages as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2016. The claimant Brenda Torres participated and testified. Claimant's husband, Salvador Torres was also present for the hearing but did not testify. The employer Aventure Staffing & Professional participated through Human Resource specialist Toni Holguin and Assistant Branch Manager Jennifer Thiele. Claimant's Exhibit A and employer's Exhibits 1 through 5 were received into evidence.

ISSUE:

Is the claimant able to work and available for work effective July 31, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a temporary part-time CNA on an as-needed basis beginning May 23, 2016. Claimant's most recent assignment ended on August 13, 2016.

The employer is a temporary staffing firm. While working for the employer claimant was assigned to various clients as a CNA on an as-needed basis. Each assignment was a separate contract. For the week beginning July 31, 2016, claimant was offered work on August 1, 5, and 6. Claimant accepted the assignments offered to her on August 1 and 5, though the August 5 assignment was ultimately cancelled. Claimant did not respond to the offer of work on August 6. The following week, claimant was offered work for August 12 and August 13. Claimant did not respond to the offer for August 12 and accepted the work for August 13. Claimant was offered but did not respond to offers of work for August 14 and 24.

Claimant testified when she was hired by the employer she was guaranteed approximately 30 hours per week. The employer denied this claim and testified, as a staffing firm, they never guarantee employees any amount of hours, as they cannot be certain what the needs of their clients will be. By the end of July 2016 claimant became dissatisfied with the number of hours she was getting from the employer and began to look for other work. Claimant also returned to school on August 22, 2016. Claimant testified some of the days she did not respond to offers of work it was either because she was busy studying for an upcoming licensing test that she hoped would gain her employment elsewhere or she was in school. Claimant testified she and her children were sick the week of August 7 and submitted documentation supporting this claim. (Exhibit A). On August 25, 2016, claimant had a conversation with the employer in which she was specifically asked if she was quitting. Claimant said she would have to think about it and would get back to the employer. Claimant did not have any further contact with the employer and took no additional assignments. According to claimant she was dissatisfied with the number of hours she was getting from the employer and determined she was "done" with them.

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 work for the weeks beginning July 31, but not for the remainder of the period in question.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23 provides:

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.

...

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

...

(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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant was offered and accepted two of the three assignments she was contacted about for the week beginning July 31. While claimant was unavailable to work one day during this week, there has been no evidence presented to indicate she was not able and available to work the remainder of this week. Accordingly, claimant was able and available for the week of July 31. The following week, the week of August 7, claimant only accepted one assignment she was offered. Claimant testified she was unavailable for additional assignments that week due to herself and her children being ill. Claimant's documentation supports this claim. Therefore, claimant was unavailable for work the week beginning August 7.

For the remainder of the time period in question claimant testified she was limiting her hours because she was busy studying for a licensing exam unrelated to this employment or was in classes. Claimant further testified, at some point in August, she became frustrated with this employer due to her lack of hours and determined she was done with them and no longer wished to accept assignments from them. Because claimant was unduly limiting her availability for the remainder of the time period in question, she does not meet the requirements of the law and benefits are denied.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Both claimant and the employer testified claimant was employed as a temporary employee on an as needed basis. The employer credibly testified claimant was not guaranteed any number of hours. As a temporary employee each job assignment was a separate contract for hire. Because specific hours were not contemplated in the original contract for hire, the above referenced administrative rule is not applicable and the issue is moot.

DECISION:

The August 22, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work the week of July 31, 2016, but is not able to work and available for work effective August 7, 2016. Benefits are allowed for the week of July 31, 2016, provided claimant is otherwise eligible and denied beginning the week of August 7, 2016.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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