

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIE A HOFFMAN-HUBER
Claimant

**DES MOINES INDEPENDENT COMMUNITY
SCHOOL DISTRICT**
Employer

APPEAL 14A-UI-10267-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/22/14
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the September 30, 2014 (reference 05) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 21, 2014. Claimant participated. Employer participated through Rhonda Waggoner, Benefits Specialists. Employer's Exhibit One was entered and received into the record.

ISSUES:

Was the claimant on an approved leave of absence?

Was the claimant an employee or was she an on-call or as-needed worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was on an on-call or as-needed basis as a substitute teacher's aide or associate beginning in October 2013. She was assigned to work as a substitute office manager for an employee out on maternity leave. The claimant expected to work through the end of September. Her last day of work was August 20 when she learned that her mother who lived out of state had taken ill. The claimant left work on August 21, 2014. The employer did not promise her that she would have her substitute position when she returned and no date was set for her return nor was she given a leave of absence as she was a substitute employee. The claimant's mother died on August 25 and the funeral was held on August 26. The employer expected the claimant to return to work. When the claimant had not returned to work by September 2, a new substitute was brought in. The employer never promised to hold the claimant's job open for her. The claimant as an on-call worker has been offered multiple additional opportunities for substitute work but has declined them all.

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".

Iowa Admin. Code r. 871-24.22(2)i(1) 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers) who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Iowa Admin. Code r. 871-24.22(2)i(3) 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.

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as-needed, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed.

Additionally, the claimant was not granted a leave of absence. She was not guaranteed any length of assignment as an on-call or substitute worker. Accordingly, benefits are denied.

No benefits have been paid to the claimant, thus, the issue of overpayment of benefits is moot.

DECISION:

The September 30, 2014 (reference 05) decision is reversed. The claimant is not considered unemployed because of her on-call employment status. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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