

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SALLIE A MOORE
Claimant

SEDONA STAFFING INC
Employer

APPEAL 20A-UI-00621-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On January 22, 2020, Sallie A. Moore (claimant) filed an appeal from the January 15, 2020, reference 01, unemployment insurance decision that denied benefits effective December 22, 2019 based upon the determination she is not willing to work the number of hours required in her occupation which is unduly limiting her availability. After due notice was issued, a telephone conference hearing was held on February 6, 2020. The claimant participated personally. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator, and Joe Vermeulen, Area Manager. The claimant's Exhibit A was admitted into the record without objection.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work the week effective December 22, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in 2011 and her most recent assignment working part-time for the employer's client Nordstrom ended in November 2019. The claimant filed her claim for benefits effective December 15, 2019 and the base period includes wage credits earned from July 1, 2018 through June 30, 2019. During that time, the claimant only worked for the employer and the wages were earned from part-time employment.

On December 26, Joe Vermeulen, Area Manager, offered the claimant a full-time assignment. The claimant declined the position as she is one of two caregivers for her grandchild and is limited on the income she can earn due to her social security benefits. The claimant continues to seek part-time work, approximately three hours a day working between 6:00 a.m. and 3:00 p.m.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work, available for work, and actively and earnestly seeking work. Benefits are allowed effective December 22, 2019, provided she is otherwise eligible.

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 96.19, 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) provides, in relevant part:

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.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

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's wage credits were earned in part-time employment. She only needs to be available for work on

a part-time basis to be eligible for benefits. The claimant has restricted her hours to work but, as she lives in a larger city, she is likely to find work within the parameters she has put in place. The claimant is able to work, available for work, and actively and earnestly seeking work. Accordingly, benefits are allowed.

DECISION:

The January 15, 2020, reference 01, unemployment insurance decision is reversed. The claimant is able to work and available for work effective December 22, 2019. Benefits are allowed. Any benefits claimed and withheld on this basis shall be paid.



Stephanie R. Callahan
Administrative Law Judge

February 14, 2020
Decision Dated and Mailed

src/rvs