

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BONITA S MILLER**  
Claimant

**APPEAL 18R-UI-08775-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/18/18  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 2, 2018, (reference 07) unemployment insurance decision that denied benefits based upon a determination that claimant was unwilling to work the number of hours required by her occupation. The parties were properly notified of the hearing. A telephonic hearing was held on September 10, 2018. The claimant, Bonita S. Miller, participated. The administrative law judge took official notice of the administrative record and the fact-finding documentation.

**ISSUE:**

Is the claimant able to work and available for work effective May 20, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Visiting Angels during the week ending May 26, 2018. Claimant began with very few hours, and she was never guaranteed full-time hours. She explained that Visiting Angels is a new company, and the person who runs it is working on building the business. Claimant's hours have increased since she started working, and she is now working approximately thirty-five hours per week. Claimant last filed a weekly continued claim for benefits the week ending June 23, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

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) 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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant provided credible testimony that she has never intentionally limited the number of hours she was available to work. Claimant began working for a new business and has taken work as it has become available to her. Claimant has established that she was available for work effective May 20, 2018, and benefits are allowed, provided she is otherwise eligible.

**DECISION:**

The July 2, 2018, (reference 07) unemployment insurance decision is reversed. Claimant is able to and available for work effective May 20, 2018. Benefits are allowed, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn