

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CARLOS A CARRILLO**  
Claimant

**APPEAL NO. 13A-UI-12892-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHIP**  
Employer

**OC: 10/20/13**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 15, 2013, (reference 02) unemployment insurance decision that allowed benefits based upon claimant's ability to and/or availability for work. The parties were properly notified about the hearing. A telephone hearing was held on December 11, 2013. Claimant participated with his spouse Mary Kay Carillo. Employer participated through SHIP human resource accounting specialist Nancy Keairns and Beyond the Bell human resources coordinator Kayla Amick.

**ISSUES:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part-time as a youth worker with a Beyond the Bell before and after school program for elementary schools in Sioux City, Iowa. When he was hired, he worked full-time. His last day of work was October 11, 2013. His position was eliminated at Leeds Elementary because of an overstaffing ratio but was told the employer would need him to do similar work at another site. On-site coordinator/supervisor Diana Deanda called him the first week of November 2013, and offered him a job at Bryan Elementary in the mornings but did not mention afternoons. He lives one block from Leeds. He said he would get back to her but did not. Amick called claimant on November 18, and left a message. On November 20, Amick spoke with him and offered him a position with the same hours and pay at one of two different schools, Clark (ten minutes) or Liberty (across town). She only mentioned morning options. He said he did not know at that point because he was helping his daughter care for his granddaughter who was hit by a car and broke her leg on October 11. He said he would call back but did not. There was no further communication. The offer of work issue has not been addressed at a fact-finding interview or resolved by a Claims' representative's decision. The issue of a potential overpayment of \$791.00 for the seven weeks ending December 7, 2013, was not placed on the hearing notice and has not been addressed.

## 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) provides:

(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).

871 IAC 24.23(18) provides:

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

(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.

Since claimant is and has been caring for his granddaughter since the separation date, has limited his availability for work and has restricted the distance he is willing to travel to an unreasonable extent, he has not established his availability for work as is his burden. Accordingly, benefits are denied.

**DECISION:**

The November 15, 2013, (reference 02) decision is reversed. The claimant is not able to work and available for work effective October 20, 2013. Benefits are denied.

**REMAND:**

The issue of whether the claimant has been overpaid benefits of \$791.00, and the work refusal issue delineated in the findings of fact are remanded to the Claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs