

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELISCHWAH BASTING

Claimant

APPEAL NO. 08A-UI-07808-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

**OC: 05/18/08 R: 03
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Elischewah Basting filed an appeal from a representative's decision dated August 19, 2008, reference 03, which denied benefits from June 23, 2008, until July 24, 2008, upon a finding that the claimant unduly restricted her availability for work. After due notice was issued, a telephone hearing was scheduled for and held on September 15, 2008. Ms. Basting participated personally. The employer participated by Nancy Voelker, senior staffing supervisor.

ISSUE:

The issue in this matter is whether the claimant was able and available for work during the period between June 23, 2008, and July 24, 2008.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant began intermittent temporary employment with Kelly Services in January 2007. Ms. Basting has accepted numerous assignments with Kelly Services. The claimant also worked as an instructor at Mount Mercy College. Although primarily assigned to work daytime shifts with Kelly Services, Ms. Basting has also been assigned to work on Saturdays and part days.

During the period of time from June 23, 2008, until July 24, 2008, the claimant planned to attend training to obtain a certified nursing assistant certificate and informed Kelly Services that she would not be available between 9:00 a.m. and 1:00 p.m. Monday through Thursdays between June 23 and July 24, 2008, and thus limited herself from morning work during the period in question in order to enhance her immediate employability.

Ms. Basting continued to look for permanent, as well as temporary, work during this time and was willing to accept afternoon, evening, or weekend work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able and available for work and has made an active and earnest search for work.

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".

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge that she actively and earnestly sought employment during the weeks in question. The claimant was willing to accept afternoon, evening, or weekend work, and had been assigned to and had accepted work of this nature in the past. The claimant was contacting prospective employers and attempting to seek permanent, as well as temporary, employment during the period question.

DECISION:

The August 19, 2008, reference 03, decision is reversed. The claimant did not unduly limit her availability and was actively and earnestly seeking work during the period in question. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw