

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYA L WILLIAMS
Claimant

APPEAL NO: 20A-UI-09984-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBS STAFFING LLC
Employer

OC: 01/26/20
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 6, 2020, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 6, 2020. The claimant participated in the hearing with Attorney Jennifer Wilkerson. The employer did not respond to the hearing notice and did not participate in the hearing. Claimant's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a CNA. She can work the 2:00 p.m. to 10:00 p.m. shifts in care facilities, hotels, or as a telemarketer because she takes medications for anxiety and depression that make her sleepy. Because of her medication schedule she needs to work from 2:00 p.m. to 10:00 p.m. as she did during her base period of employment. The claimant left her previous employment with CBS Staffing due to having to move because of a domestic violence situation. She is now in a safe place and able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code section 96.4(3) provides:

A unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

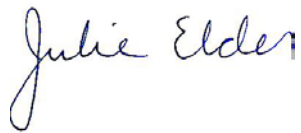
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while

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 4 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

While the claimant needs to work the 2:00 p.m. to 10:00 p.m. shift, that shift is widely available in the nursing home and hotel industries. She is limited to that shift due to the fact the medications she is required to take make her tired in the early morning and late evening. The claimant worked from 2:00 p.m. to 10:00 p.m. during her base period of employment. The administrative law judge finds the claimant is not unduly limiting her availability for work and is able and available. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 6, 2020, reference 04, decision is reversed. The claimant is able to work and available for work effective January 26, 2020. Benefits are allowed effective the week ending February 1, 2020, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

November 13, 2020
Decision Dated and Mailed

je/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.