

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAY A KENDALL
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 19A-UI-01868-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/01/18
Claimant: Appellant (1)

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 February 22, 2019, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work because she does not want to earn enough wages to affect her receipt of Social Security benefits. The parties were properly notified of the hearing. A telephonic hearing was held on April 10, 2019. The claimant, Kay A. Kendall, participated. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective November 18, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last employed by Temp Associates. Claimant worked full-time for this employer. Claimant's wage record appears to show two quarters of full-time employment and two quarters of part-time employment. Claimant explained that she was injured at work and was on worker's compensation benefits for a short period. When she returned to work she had a light-duty work restriction, and the employer did not have light duty work available to accommodate her injury, so she was laid off.

On November 15, 2018, claimant received a diagnosis of stage 4 colon cancer. She was told when she received this diagnosis that she was disabled and could no longer work as a full-time employee. Claimant reactivated her claim for unemployment insurance benefits at this time. Additionally, claimant applied for social security disability benefits. Claimant represented to social security that she could work part-time but not full-time. Claimant's receipt of social security benefits requires her to stay below a certain income level.

Claimant is currently seeking a part-time job. She has applied at restaurants, convenience stores, and temporary employment services. Claimant is available to work three days each week, and she believes she could work full-time hours those three days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work. Benefits are withheld.

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.

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.

(Emphasis added.) In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant's wage history reflects only full-time employment. Claimant is not currently physically able to or available for full-time employment. Her testimony was that she is only seeking part-

time employment. The administrative law judge must conclude that claimant is not currently able to and available for work, and therefore benefits must be withheld.

DECISION:

The February 22, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant is not able to and available for work. Benefits are withheld until such time as claimant becomes physically able to work full-time and available for full-time employment.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn