

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERI L MILLETT
Claimant

APPEAL NO. 06A-UI-09633-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFF SOURCE INC
Employer

OC: 09-03-06 R: 02
Claimant: Respondent (1R)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 29, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 16, 2006. Claimant participated. Employer participated through Ken Peterson. The administrative law judge took judicial notice of the administrative record.

ISSUE:

The issue is whether claimant is able to and available for work from September 3 to October 4, 2006.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a temporary CNA assigned to work as she was available, and if work was available, until her separation on October 4, 2006. She cancelled her shift on September 15 because she twisted her ankle, and missed shifts on September 30 and October 1 because she said she was being evicted. Otherwise the employer cancelled some of her shifts and she did not always answer her phone or return phone calls. There was also a reduction in the amount of available 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:

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.

It appears both parties bore some responsibility for claimant's lack of work. However, since claimant was generally available for work between September 3 and October 4, 2006, benefits are allowed.

DECISION:

The September 29, 2006, reference 01, decision is affirmed. The claimant is able to work and available for work between September 3, 2006 and October 4, 2006. Benefits are allowed.

REMAND:

The separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw