

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALLY JOB**  
Claimant

**APPEAL NO. 07A-UI-06513-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STEPPING STONES EARLY  
LEARNING CENTER INC**  
Employer

**OC: 06/03/07 R: 02  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 22, 2007, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 30, 2007. Claimant participated and was represented by Mike Holzworth, Attorney at Law. Employer participated through Pam Mahoney.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer.

**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 full time preschool teacher from August 21, 2006 until June 1, 2007 when she quit the full time employment and accepted a substitute on-call teaching position. Claimant needed to take classes and workshops on various days and would not be able to work full weeks for teacher recertification, which is not required for her job at Stepping Stones. Mahoney told her she did not have enough vacation time for planned absences on June 7, 8, 11, 12, 13, 14, 25, 27, July 9, 10, 16, and 17, 2007. On May 14, at claimant's suggestion, Mahoney and claimant agreed she would be considered a substitute teacher for the summer and put her on a substitute teacher list. Continued full-time work would have been available. Since claimant had also been talking about finding employment at hospice or elsewhere, when employer received the Notice of Claim, Mahoney believed claimant had quit the employment and did not call her for substitute work. Neither party contacted the other to clarify questions about the employment status or work availability.

**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.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her full time employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(26) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(26) The claimant left to go to school.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Claimant's decision to leave full time employment, when continued work was available, to attend classes not required for her job, was not a good cause reason attributable to the employer for leaving the employment.

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)i(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

871 IAC 24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant then agreed to work as a float or substitute teacher on-call or as needed, she is not considered to be unemployed within the meaning of the law. When an individual agrees to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the on-call availability when work is available as no regular hours were guaranteed. Accordingly, benefits are denied.

**DECISION:**

The June 22, 2007, reference 03, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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