

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYRISHA L DAVIS**  
Claimant

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**APPEAL 17A-UI-04737-NM**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/23/16**  
**Claimant: Appellant (2)**

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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 April 25, 2017, (reference 04) unemployment insurance decision that held claimant was not able to and available for work March 5 through April 15, 2017. The parties were properly notified of the hearing. An in-person hearing was held on June 13, 2017 in Des Moines, Iowa. The claimant participated and testified. The employer participated through Administrative Manager Liz Wilkinson and Recruiter Michele Schoop. Employer's Exhibits A through F were received into evidence.

**ISSUE:**

Was the claimant able to work and available for work from March 5 through April 15, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's last full time assignment with this employer ended on October 27, 2016. On March 9, 2017, the employer attempted to contact claimant via telephone and email with the offer of a new assignment. Claimant did not answer the employer's phone calls or respond to their emails. The employer attempted to reach claimant several more times via phone and email with other job opportunities throughout March and early April. (Exhibits A through E). Claimant did not respond to any of their phone calls or emails until April 14, 2017. On April 14, claimant phone Schoop to ask about the job offers. Schoop informed claimant that the positions had been filled, but she would contact her if anything else came up.

Claimant testifies that in early March her phone screen broke and she was unable to see anything on its display, including emails, text messages, or missed calls. According to claimant the phone function was working, but if she was not around her phone when the call came in, she had no way of seeing there was a missed call on the display. Claimant contacted the employer as soon as she got a new phone and was able to read the emails she had been sent. Claimant testified that during the time in question she was continuing to make at least two job contacts a week and was able to identify several employers with whom she had interviews or

submitted applications. According to claimant she used her home telephone number, where she would be able to see if anyone had called, as her contact number with these potential employers. Claimant testified she had believed she was separated from employment with this employer, noting there had been a previous unemployment appeal hearing based on this separation, and so she did not update them with her home telephone number. Claimant admitted that she is a full time student, but also testified she has worked and attended school full time since October 2015. According to claimant there was nothing preventing her from being able to or available for work during the time in question.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the period in question, March 5 through April 15, 2017.

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 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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.

Iowa Admin. Code r. 871-24.23 provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant did not respond to calls and emails from the employer because an issue with her cell phone prevented her from being aware that the employer was trying to contact her. Claimant provided credible testimony that she was continuing to make the required weekly job contacts during the time in question and that she provided a home telephone number where she was available to accept communication regarding potential jobs. Claimant also testified she is a full time student and has been since October 2015. Claimant's wage history indicates she has been able to maintain full time employment during this time as well. Claimant has provided sufficient evidence to she was able to work, available for work and actively and earnestly seeking work during the time in question. Accordingly, benefits are allowed for this time period.

**DECISION:**

The April 25, 2017, (reference 04) unemployment insurance decision is reversed. The claimant is able to work and available for work from March 5 through April 15, 2017. Benefits are allowed.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs