

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GAIL HERSCOVICI-PUCKETT

Claimant

APPEAL 17A-UI-06296-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC

Employer

OC: 05/07/17

Claimant: Appellant (2)

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:

Gail Herscovici-Puckett (claimant) filed an appeal from the June 15, 2017, reference 02, unemployment insurance decision that denied benefits based upon the determination she was not willing to work during the times that work in her occupation was done. The parties were properly notified about the hearing. A telephone hearing was held on July 10, 2017. The claimant participated. The Bon-Ton Department Stores, Inc. (employer) did not respond to the hearing notice and did not participate. Claimant's Exhibit A was received.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective May 7, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Sales Associate beginning on October 14, 2016, and her last day worked was in mid-April 2017 when she was told her hours were being eliminated. The claimant filed her claim for benefits the week of May 7, 2017. Her base period includes the 2016 calendar year. During her base period, the claimant worked the first and fourth quarters. She worked part-time during both quarters. The claimant is currently available to accept part-time employment. She does not have medical conditions that would prevent her from accepting part-time employment and, while she goes to school part-time, that does not prevent her from obtaining part-time employment. The administrative record shows the claimant is making two job contacts each week.

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 effective May 7, 2017. Benefits are allowed, provided she is otherwise eligible.

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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

....

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

....

(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.

....

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

....

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. The claimant's base period is comprised entirely of part-time wages. The claimant is currently able to and available for part-time employment or, in other words, to the same extent as she accrued her wage credits. The claimant does not currently have any medical conditions preventing her from obtaining employment. Her school schedule does not currently prevent her from obtaining part-time employment. The claimant is not currently performing any work for the employer and has not since mid-April 2017. Accordingly, benefits are allowed effective May 7, 2017, provided the claimant is otherwise eligible.

DECISION:

The June 15, 2017, reference 02, unemployment insurance decision is reversed. The claimant is able to and available for work effective May 7, 2017. Benefits are allowed, provides she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn