

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JULI I FIRESTINE  
1920 – 22<sup>ND</sup> ST  
DES MOINES IA 50310-6013

ACE MOVING & STORAGE INC  
1800 INDUSTRIAL CR  
WEST DES MOINES IA 50265-5546

**AMENDED**

Appeal Number: 06A-UI-02455-LT  
OC: 01-29-06 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 22, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 27, 2006. Claimant did participate. Employer did participate through Steve Pautvein.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time packer and works for an hourly wage from 7:30 a.m. to 5:30 p.m. when moving and is paid a combination of wages and commission when packing. She has worked reliably regular hours since her hire in October 2004 and has substantial wages in each of her base period quarters with this employer. Most recently, her reported gross wages during

four of the seven weeks claimed are enough to push her beyond benefit eligibility limits. In the summer, she regularly works five days per week and her hours vary from one to five days per week between December and March which is considered the slow season.

#### 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)i(1)(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. 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.

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.

(2) 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 section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Claimant has been available for substantially regular work during all seasons. Given the limited number of weeks, claimant's wages have been low enough to make her eligible for partial benefits; her work is not considered on-call. Although employer argues she was hired to work only on-call or as-needed, on-call work implies that work will not be regularly available such as a vendor for sporadic events in a stadium or auditorium. Sufficient regular work has been available in the claimant's base period history to conclude the employment is not on-call or as-needed and that this job provides even more work than does traditional seasonal work such as construction, landscaping, and other outdoor work dependent on seasonal work demands that is not considered on-call. Accordingly, benefits are allowed.

DECISION:

The February 22, 2006, reference 01, decision is reversed. The claimant is able to work and available for work effective January 29, 2006. Benefits are allowed.

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