

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI L JOHNSON
Claimant

L A LEASING INC
Employer

APPEAL 17A-UI-04074-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/26/17
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Same Hours and Wages

STATEMENT OF THE CASE:

Lori J. Johnson (claimant) filed an appeal from the April 10, 2017, reference 02, unemployment insurance decision that denied benefits effective February 26, 2017 because she was still employed, working the same hours and wages contemplated at the time of hire with L A Leasing, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2017. The claimant participated. The employer participated through UI Benefits Administrator Colleen McGuinty and Branch Manager Shelby Kingery. No exhibits were offered or received into the record. Official notice was taken of the administrative record, specifically the claimant's appeal letter and her database readout (DBRO).

ISSUES:

Is the claimant able to and available for work?
Is the claimant still employed in the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a temporary full-time employee working at Westrock, the employer's client, beginning on November 22, 2016. That assignment ended on February 7, 2017 and the claimant requested additional work, but none was available. The claimant had exhausted her unemployment insurance benefits for the claim year that began February 28, 2016 in August 2016.

The claimant filed her current claim for benefits the week of February 26, 2017. On March 2, 2017, the claimant began an assignment with the employer's client UFP Technologies (UFP) earning \$9.25 an hour. She worked 16.88 hours for the week ending March 4, 35.32 hours for the week ending March 11, and 8.25 hours for the week ending March 18. The administrative record shows, the claimant did not report any wages earned for those three weeks when she made her continued weekly claims for benefits.

The claimant's employment with the employer ended on March 13, 2017 when she quit. The claimant notified the employer the work at UFP was too easy and that she had found another job. The job she thought she had fell through as she was not hired by the new employer.

The claimant also quit because her mother has health problems. The claimant felt she was needed to provide care for her mother until the week beginning April 23, 2017. On April 24, 2017, the claimant contacted the employer and requested a new assignment. She was to return to her assignment with UFP on May 4, 2017; however, she contacted the employer the day before and stated that due to a recent decline in her mother's health, she would not be able to work.

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 effective February 26, 2017, with the exception of the one week period beginning April 23 through April 29, 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(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.

...

(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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(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 was not available for work effective February 26 through week ending March 11, 2017 because she was employed and removed from the labor market. She was employed in the same hours and wages contemplated at the time of hire. The claimant was not able to or available for work effective March 12, 2017 because her mother was ill and needed care. The claimant testified she had to quit her job on March 13, 2017 because of her mother's health. If the claimant was unable to work her current job due to her mother's illness, then it is not believable that she was able to or available for work after that employment ended without any change in her mother's condition. The claimant verifiably sought employment with the employer the week of April 23, 2017. At that time, she was able to and available for work. However, the following week, the day before her employment was to begin, the claimant again stated she was not able to work due to her mother's health condition.

DECISION:

The April 10, 2017, reference 02, unemployment insurance decision is modified in favor of the claimant. The claimant was not able to or available for work effective February 26 through April 22, 2017. The claimant was able to and available for work effective April 23, 2017. However, she was again not able to and available for work effective April 30, 2017. Benefits are allowed for the week of April 23, 2017, if the claimant is otherwise eligible. Benefits are denied effective February 26 through April 22, 2017 and effective April 30, 2017.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs