

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDY L VERRO
Claimant

APPEAL 18A-UI-06252-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/29/18
Claimant: Appellant (2R)**

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 June 4, 2018, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant reported she was not able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on June 21, 2018. The claimant, Judy L. Verro, participated. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective May 13, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an online weekly continued claim for benefits for the week ending May 19, 2018. Claimant mistakenly reported that she was not able to work and available for work that week. Claimant was physically able to work that week. She is currently working in a part-time job, three days per week from 9:30 a.m. until 4:30 p.m. Claimant is seeking second-shift employment, as she has experience working second-shift. Claimant has applied to numerous businesses since filing her claim for benefits, including thrift stores, hotels, and other retail establishments. Claimant has not reported any of the income from her part-time job to Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work for the week ending May 19, 2018. 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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant has established that she was able to work for the week ending May 19, 2018. Though she was employed in a part-time position, claimant is seeking full-time employment on a different shift from her part-time job, indicating she is available for work. Claimant was actively and earnestly seeking work. Accordingly, benefits are allowed, provided she is otherwise eligible. This matter will be remanded to investigate claimant's unreported income from her part-time position.

DECISION:

The June 4, 2018, (reference 03) unemployment insurance decision is reversed. Claimant was able to and available for work effective May 13, 2018. Benefits are allowed.

REMAND:

The issues of claimant's unreported income from her part-time position and the effect, if any, of this unreported income on her eligibility for benefits and weekly benefit amount are remanded to Investigation and Recovery and/or the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn